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Sessional Paper No 82  
presented April 29, 1977



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# A PUBLIC POLICY DIRECTION FOR THE HIGHWAY TRANSPORTATION OF GOODS

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FINAL REPORT OF THE  
SELECT COMMITTEE OF THE LEGISLATURE  
ON HIGHWAY TRANSPORTATION OF GOODS

BUD GREGORY M.P.P. CHAIRMAN

1977







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Ontario

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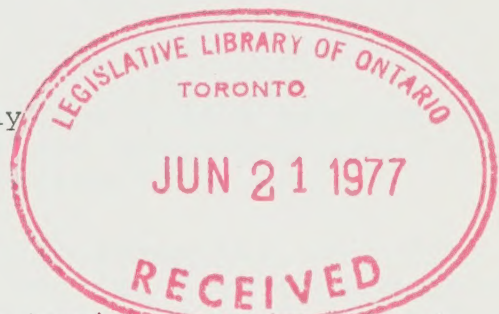
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CLERK

David Callfas

April 24, 1977

TO: The Honourable R.D. Rowe  
Speaker of the Legislative Assembly  
of the Province of Ontario.



Sir:

We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on May 25, 1976 to enquire into the transportation in Ontario of goods on Ontario highways, have now the honour to submit the attached final report.

*Bud Gregory*  
Bud Gregory, Chairman

*Richard S. Smith*  
Richard S. Smith,  
Vice Chairman

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CHAIRMAN  
Bud Gregory, M.P.P.

CLERK  
David Callfas

ACKNOWLEDGEMENTS

The terms of reference and the time limits assigned by the Legislative Assembly to this select committee posed a substantial challenge to Members and staff.

The Members of the Committee approached the task with vigour and a sense of purpose that enabled them to complete and table an interim report both on time and with unanimity.

This final report is extensive, and presents an in depth investigation into the Highway Transportation of Goods in accordance with our terms of reference.

The Committee was fortunate in having the services of a very competent staff, whose names are listed on the next page.

I would like in particular to commend our counsel, Mr. Max Rapoport, Q.C., and our Director of Research, Mr. Brian Caldwell. It was because of the work of these two gentlemen that the Committee was able to cope with such a complex subject.

Mr. David Callfas, Assistant Clerk of the Legislative Assembly, assumed enormous responsibilities in not only scheduling the many hearings across the Province and abroad, but also has taken care of the physical arrangements for the Committee.

I congratulate the Members for their ability to work well together, and thank them for making the position of Chairman a very rewarding experience.

A handwritten signature in cursive script, reading 'Bud Gregory'.

Bud Gregory, M.P.P.  
Chairman







## COMMITTEE STAFF

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Brian B. Caldwell,	Director of Research
Max L. Rapoport, Q.C.	Counsel

### INTERIM REPORT

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Estelle Solursh,	Assistant Secretary
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### FINAL REPORT

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Catherine J. Paterson,	Special Assistant

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**PART I**  
**Introduction**  
**and**  
**Background**





## CHAPTER 1

### INTRODUCTION

In early times, water transport was the only means of moving goods in Canada. Farms along the St. Lawrence River had narrow frontage and considerable depth. This enabled the inhabitants to have comparatively easy access to boats.

As settlements moved inland and where water froze in low temperatures, it became necessary to look elsewhere for transport. Railroads were expensive for a young country; nevertheless, the history of rail construction in Canada is an interesting chapter in the development of the nation.

The rails dominated the transportation scene for many years. A half-century ago, Parliament decided to consolidate a number of bankrupt lines into the system known as the Canadian National Railways. Private enterprise in this country is amply demonstrated by the powerful Canadian Pacific Railway. Ontario for reasons of economic development constructed the Timiskaming & Northern Ontario Railway.

Railways other than the Ontario Northland (formerly the Timiskaming and Northern Ontario) are exclusively within federal jurisdiction. At the height of their prosperity, they could, and did, charge whatever the traffic would bear. On the other hand, they made commitments to the carriage of natural resources such as the one for grain in the form of the Crow's Nest Pass Agreement which is well known. History books are

replete with illustrations of grants, subsidies and concessions made to the federally controlled railways of Canada.

When roads were built in Ontario and commercial vehicles were introduced, the revolution in transportation began. Domination by the railways was challenged for the first time. The Railways would at first not acknowledge the existence of a new competitor but later took whatever steps were available to protect their welfare. One such tool was the adoption of "agreed charges" which enabled the railways to make contracts for all or most of a large shipper's volume because of a special rate. Another method was the publication of competitive rates which would be valid only as long as the competition existed. Yet, in 1976, the railways of Canada did not appear before this Committee.

A student can find much of interest in the history of transportation in this country. The Committee finds significant remnants of railway influence in the current highway transportation industry. For instance, the tariffs or rates charged by many carriers are based on classifications of commodities used by the railways. Remembering that the railways enjoyed a monopoly, one can understand the self-generated rule adopted at that time. One wonders at the advisability of carrying on this tradition and comments in this respect appear later in this report.

Reproduced below is a chronology of significant stages in the development of transportation regulation during the last 50 years.

The early history of road transport must be viewed in the light of the importance of the Canadian railways which dominated the transportation scene during the first quarter of the twentieth century.



<u>YEAR</u>	<u>EVENT</u>
1928	Public Commercial Vehicle Act of Ontario, proclaimed on September 17th. Operating licences were issued in that year to 325 persons for 945 vehicles.
1932	<p>Report of the Royal Commission on Railways and Transportation in Canada, known as The Duff Report. The Commission's report has a timely sound at this time. It states that the related problems of regulation and restriction of motor traffic on the highways could best be dealt with by a conference of the highway departmental officials of all the provinces meeting in conference at the instance of the Federal Government. At this conference the broad lines upon which, for example, the regulation of common carriers of goods and merchandise could be effected might be laid down as follows:</p> <ul style="list-style-type: none"> <li>(a) Schedule of rates and charges must be published.</li> <li>(b) Within that schedule common carriers must accept and carry what is offered without discrimination between shippers.</li> <li>(c) Operators must be insured against all risks, including third-party risks.</li> <li>(d) Operators must keep accounts on a prescribed system and render returns to public authorities on a common basis.</li> <li>(e) Uniform bills of lading must be used and a copy given to all shippers.</li> </ul>

<u>YEAR</u>	<u>EVENT</u>
1932	<p>(f) Minimum standards in regard to working conditions, including wages and hours of labour should be required.</p> <p>(g) Due regard must be had to the preservation of roads and to the safety of the public.</p> <p>The Report considered the possibility of exclusive permits to common carriers and regulations for the control of contract carriers and privately-owned trucks. It concluded with the observation that "experience of the traffic alone will indicate the principles to be applied".</p>
1933	<p>The Public Commercial Vehicles Act of Ontario was amended to provide that applicants for operating licences must first secure a certificate of public necessity and convenience from the Ontario Municipal Board.</p>
1934	<p>The Public Commercial Vehicles Act of Ontario was amended to permit publication of tariffs of tolls. (It should be noted that no regulations were promulgated until March, 1963.)</p>
1936	<p>The Public Commercial Vehicles Act of Ontario was replaced by the Commercial Vehicles Act, wherein commercial vehicles were classified as either "public" or "private". (It should be noted that licensing of private vehicles under this Act was never implemented.)</p>

<u>YEAR</u>	<u>EVENT</u>
1938	<p>Royal Commission on Transportation in Ontario.</p> <p>The Order-in-Council directing this inquiry was passed on August 26, 1937. It is known as the Chevrier Report and it was issued on December 23, 1938. It found in favour of:</p> <ol style="list-style-type: none"> <li>1. Necessity for Regulation</li> <li>2. "The duty of the controlling authority should be confined to insurance of the dependability of service, protection of the public against extortionate charges, discrimination and unfair and ruinous competition, the exploitation of labour, dangerous equipment and hazardous operating practices. It should afford protection of the licensed operators in their legitimate interests. Basic regulations should be made applicable to all commercial vehicles, whether they be publicly or privately operated."</li> <li>3. Regulation of rates.</li> <li>4. Formation of a Transport Board.</li> <li>5. Exemption from regulations concerning the hours of work or wages involved in the operation of trucks owned and operated by farmers or by the farm cooperatives.</li> </ol>
1949	<p>The Commercial Vehicles Act of Ontario was replaced by The Public Commercial Vehicles Act.</p>

<u>YEAR</u>	<u>EVENT</u>
1951	Royal Commission on Transportation in Canada.  It dealt with rail rates and national transportation policy, and is known as The Turgeon Report.
1954	The Motor Vehicle Transport Act of Canada was passed, following the decision of the Privy Council in the historic case of Attorney-General for Ontario and others vs. Israel Winner, doing business under the name and style of Mackenzie Coach Lines, and others.
1955	The Ontario Highway Transport Board was formed.
1957	The Ontario Department of Transport was created.
1958	Ontario Highway Transport Board Report on Bills of Lading.
1961	Royal Commission on Transportation in Canada.  It dealt with the problems relating to railway transportation in Canada, and is referred to as The McPherson Report.
1963	Regulations prescribed under The Public Commercial Vehicles Act of Ontario for the publication of rates.
1966	Report of the Ontario Highway Transport Board, "A Study and Review of Public Commercial Vehicles in Ontario". The terms of reference appeared in the Ontario Gazette on October 24, 1964.
1967	The National Transportation Act, Canada, was passed.



<u>YEAR</u>	<u>EVENT</u>
1973	The current leasing provisions of The Ontario Public Commercial Vehicles Act were introduced.
1975	Operating licences issued to 9,924 persons for 45,621 vehicles. The number of licensees has increased from 1928 by 3,000%.
1975	Report of the Ministerial Inquiry into the Dump Truck Industry which recommended and led to the re-introduction of entry controls in the dump vehicle industry.
1976	Bill 4 was introduced in Ontario Legislature to amend The Public Commercial Vehicles Act by closer regulations of leasing commercial vehicles. The intent of the Bill was to end two-way trip leasing. Because of the complexity of this and many other industry problems, the Legislature decided on May 25, 1976 to investigate highway transportation of goods, and this Committee was then established. The Bill was left standing in the Legislature after second reading*
1977	This Committee held hearings and conducted further research into the transportation of goods on Ontario highways.

The terms of reference for the Committee follow :

...to examine, investigate, enquire into, study and report on all matters pertaining to the transportation in Ontario of goods on Ontario highways, including all matters affecting or pertaining to the shippers of goods and the transporters of goods whether for gain or not for gain, the regulatory process and the public interest in general and without

\* Bill 4 is attached as Appendix W.

restricting the generality of the foregoing, including all matters relating to the following:

- in present day circumstances, types and quality of highway transportation services offered to and used by the shipping public;
- the effectiveness of the existing highway transport industry, both private and for-hire, to meet the needs of shippers and the public;
- the ability of the highway transport industry to respond to changes in shippers' needs;
- the registration of commercial vehicle ownership under The Highway Traffic Act of commercial vehicles used in highway transportation services;
- the impact of the growth in the use of owner/operators, brokers, leasing companies, driver pools on the highway transport industry and the highway transportation services to the shipping public;
- the impact of the present day regulatory process as it affects the public interest, shippers and carriers;
- the effectiveness of the test of public necessity and convenience as a device to regulate entry and its capability of uniform application;
- the relationship and impact of fleet size of individual operators to the application of a principle of control of entry into the for-hire trucking industry;

- the system of classifying carriers in relation to types of commodities, routes or types of vehicles as opposed to general classification of common or contract carrier;
- the extent to which commodities exempted from regulation should be expanded or contracted;
- the impact of rate filing, rate control and rate bureaux;
- the effectiveness of the judicial process, as it applies to highway transportation licensing legislation to achieve compliance with regulatory requirements;
- the investigatory powers necessary to enforce the statutory and regulatory requirements in the courts;
- the effect of amending sections 10 and 11 of Regulation 418 under The Highway Traffic Act to expand or further restrict the terms of reciprocity therein set out and including the benefits to Ontario residents in acquiring such reciprocal rights in other Canadian and American jurisdictions;
- the impact of applying fuel tax and sales tax to non-resident owners of commercial vehicles operated into Ontario under reciprocal rights;
- and such other matters as may be referred to the Committee by the Minister of Transportation and Communications.

## CHAPTER 2

### ACTIVITIES AND PRINCIPLES

#### 2.1 Activities Since the Interim Report

Five months have passed since the publication of the Committee's Interim Report. Much has happened in that time. The principles of the Interim Report and the specific proposals have been discussed by the public, by every facet of the industry and by the Government.

The Committee has welcomed and considered written and verbal reactions of industry to the Interim Report. The Ontario Trucking Association commented on the Report at its 50th Annual Convention in November; followed with a series of written comments to the Committee.



Other groups and individuals have done the same, including:

The Canadian Manufacturers Association  
The Canadian Industrial Traffic League  
The Board of Trade of Metropolitan Toronto  
The National Council of Labour  
The Ontario Northland Transportation Commission.

Several other groups and individuals took the time to write, either commenting on the Interim Report, or expressing opinions on subjects which were not dealt with in the initial report.

These contributions are in addition to the 200 briefs received prior to the Interim Report, and to the appearance of nearly 300 witnesses before the Committee. All briefs presented to the Committee and tapes of all meetings held in Toronto, have been turned over to the Legislative Library for future public reference. Public fact-finding hearings in the summer and fall of 1976 were held in Fort Erie, Fort Frances, Geraldton, Hawkesbury, Kapuskasing, Kingston, London, North Bay, Ottawa, Owen Sound, Pembroke, Sarnia, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto, Windsor and in Washington, D. C. The Committee attended hearings held by the Ontario Highway Transport Board, visited a truck inspection station and examined a customs compound at the national boundary at Fort Erie. It also inspected a transport terminal in southwestern Ontario.

Since the Interim Report, the Committee has initiated further discussion and sought further information on issues which were particularly vital. In October, 1976 six members of the Committee travelled to England, Belgium and West Germany to explore the methods of truck transportation regulation in those countries and the system of goods

movement between members of the European Economic Community.

The Committee had received during the early hearings a great deal of testimony on the effects of various regulatory laws in these and other countries. Much of the testimony referred to academic work done to establish the effects of "deregulation" on the truck transportation market in England and Belgium and to point out some of the adverse effects of West Germany's tightly controlled system on its trucking industry.

The Committee agreed that the evidence seriously called into question the principle of entry controls. It was concerned, however, whether it was appropriate to take information from other countries and apply it to Ontario.

Clearly, there were political, social, economic and perhaps most importantly, geographic differences between all jurisdictions referred to and Ontario. These differences play a strong role in the determination of market forces. The needs, strengths and weaknesses of the trucking industry, and therefore its performance, and the appropriate role of government, are all directly affected by these factors.

The Committee believed that there were influences which could not be measured which affected the state of the trucking industry in these jurisdictions and those Committee members who travelled to Europe confirmed this belief.

The practical experiences of these jurisdictions, Britain particularly, were not as they had been reported in many submissions. The degrees and types of regulation which exist in these countries, Britain

and Belgium for example, are so different that broad comparisons, let alone conclusions, are not possible.

A detailed report of the Committee's findings is attached as Appendix D. Significant data were collected and publications received by the Committee have been turned over to the Legislative Library for public reference.

In addition, individual members of the Committee travelled to the University of Tennessee in Nashville, and the University of Michigan and Michigan State University to examine the courses in transportation theory and management offered at those institutions. These trips helped the Committee's consideration of educational needs within the industry and of conceptual methods to be used in examining transportation system needs, design and performance.

Another member visited Ohio and Minnesota to examine cartage regulation in major cities. The knowledge gained aided consideration of the urban freight/cartage issue, which was so strongly emphasized in the hearings.

As readers of the Interim Report will recall, the Committee was impressed by the submissions from shippers and truckers on the effects of Ontario's lack of vehicle registration reciprocity with other jurisdictions. In the absence of reciprocity, higher costs exist for the transportation of many commodities. The commodities affected often involve Canadian - U.S. or U.S. - Canadian movements and it was necessary to discuss this problem with representatives of certain United States jurisdictions. The States of Michigan and Indiana sent representatives to the hearings in Windsor. Florida and Pennsylvania sent

representatives to a hearing in Toronto.

It became clear at that time that large volumes of goods and people travelled between Ontario and Florida. Everyone involved in this process expressed a strong desire for an Ontario - Florida reciprocity agreement to facilitate inter-jurisdictional transportation. Florida is a vital source of food products for Ontario and the flow of these goods should be made as efficient as possible. Because of the significance of this question to all of Ontario's people, the Committee sent a group of four members to Florida to meet with producers, truckers and government officials. A full discussion of the meetings with Florida representatives appears in Part V.

The information gained reinforced the commitment to reciprocity. The Committee emphasizes the need for Ontario to consider equitable reciprocity agreements with Canadian and American jurisdictions as soon as possible.

Further to these fact-finding missions, the Committee called before it certain groups whose opinions were necessary to complete the deliberations. The Ministries of Revenue, Colleges and Universities, Energy, Labour and Consumer and Commercial Relations all have testified before the Committee since the Interim Report. All Regional Municipalities were invited to give their views on cartage operations. Not all appeared.

Hearings were held to discuss specific issues with two salt companies, the Ontario Trucking Association and the Ontario Economic Council.



Two days of special hearings were held to examine the dump truck industry.

Written information was received from the Ministry of the Environment. The Committee has corresponded with and heard additional oral testimony from the Ministry of Transportation and Communications. The Committee's staff had discussions with Statistics Canada, the Federal Ministry of Consumer and Corporate Affairs, Labour-Canada and various other groups.

The Committee identified ten major economic issues on which comment from experts was necessary. Those issues were either stated explicitly or implied by the terms of reference. A list of those issues is attached as Appendix E.

The Committee hired the York-University of Toronto Joint Program on Transportation to perform certain tasks. Two economists, Dr. R. K. House and Dr. D. G. Gillen were asked to prepare a critique of twenty-three briefs provided to them by the Select Committee, and to prepare an "overview". This took the form of a brief by each person on the ten economic issues, based on his reading of the selected briefs and his general involvement and understanding of the transportation industry. Their overviews are attached to this report as Appendices F and G. Their critiques of the twenty-three selected briefs are available in the Legislative Library.

In addition, the Joint Program, as part of its contract, produced a bibliography on this subject that is attached as Appendix H along with bibliographies prepared by the Legislative Library and the Ministry of Transportation and Communications.. The efforts of the Joint Program must be acknowledged as its work has served the Committee well in furthering its understanding of the industry.

The Committee also acknowledges the contribution of Dr. David Maister, Assistant Professor of Economics, University of British Columbia. While Dr. Maister was not on contract to the Committee, he did not spare of his time in discussions with our Director of Research. He made available his works on the trucking industry which are referenced in various places in this Report.

To acknowledge the contractual contributions of the Joint Program and the informal contribution of Dr. Maister does not imply that the contents of this Report are to be associated with them unless specifically referenced.

## 2.2 The Nature of the Final Report

The Committee went to great lengths to ensure that its inquiry would be open and fair and that it would consider the views of all who wanted to be consulted and all who should be consulted.

The implementation of this Report will rectify many of the problems faced by the suppliers and users of for-hire truck transportation. As the market changes so will the very nature of the industry and the types of service required. Regulatory law and policy which results from this Report will need to be continually reviewed to reflect these changes.

The terms of reference were very broad. The effective mandate was to examine, report and make recommendations on virtually every facet of the trucking industry. This was to be done in a very short time.

The industry is vast. If the Committee is impressed by one thing in particular, it is the diversity of the industry and the complexity of its links with virtually all other sectors of the economy.

The Committee has not closed the door on many significant issues. Economists and others will continue to discuss and to structure more sophisticated models to examine such things as whether or not economic regulation increases rates or costs, whether or not there are economies of scale in the industry, when and where rail is more energy efficient than truck. This Report is not expected to end these discussions.

The Committee provided a catalyst for thought about the movement of goods in Ontario. The movement of goods is by any standard critically important and vital to our economic and social well being. It would be shortsighted not to continue and expand research into the industry.

This Final Report is based on a massive compilation of information, fact and opinion and represents the Committee's attempts to analyze it realistically. When the recommendations are implemented, they will promote a trucking industry in Ontario which serves well the needs of the people of the province, and which can continue to grow as one of the safest, most efficient and most viable in the world. Ontario deserves nothing less, and should demand nothing less of its industry and of its Government.

It should be noted at the outset that this Report does not deal with safety as a specific issue. Safety was discussed in a general way in the Interim Report and the Committee undertook to discuss areas of mutual concern with the Select Committee on Highway Safety. Several

discussions at the staff level took place and a meeting ultimately was held in March of 1977 between the Chairmen of the two Committees. It was mutually agreed that the Committee on Highway Safety had the mandate and the responsibility to deal with any and all questions relating to the safety of commercial vehicle operations on Ontario highways. While there cannot help but be some overlap of subject matter, this Committee has not dealt with any matter from a safety-only point of view. The Highway Safety Committee's terms of reference are attached as Appendix H-1.

Readers of the Interim Report will recall other commitments to make further comment on particular subjects in the Final Report. Attached as Appendix I is a list of Interim Report references to future intentions of the Committee.

### 2.3 Principles of the Final Report

If economic regulation in Ontario is to work, it must be viewed as a system, or a complex whole, a set of connected things or parts or a set of coordinated doctrines. No system can be implemented piecemeal. A truck cannot be built of parts without a design with which each detailed part is compatible. This is equally true of a regulatory system.

The Committee does not believe in regulation as an end in itself, but as a means of accomplishing defined policy objectives. If not part of a policy system, regulation is ad hoc and its effects, its successes and failures can be redundant and contrary to the public interest.



Measures are recommended in this Report that will be integral parts of an effective regulatory system. The necessary system is defined and recommendations are made with regard to the actual workings of that system.

As stated in the Interim Report on page 20, "it is (our) desire to establish objectives together with policies designed to achieve these objectives".

The Committee has been criticized by some for not properly defining principles which must form the foundation of any proper regulatory scheme. The Final Report is founded on certain comments from the Interim Report to dispel this thought. The following quotations set the Final Report in its proper context.

Fundamental to the recommendations of the Committee is the assumption of,

- "continued provincial control over commercial vehicles on provincial highways" (page 12)

The following was expressed regarding the principles of transportation:

- "Transportation as a development tool has the ability to assist in the bringing of equity to people, communities, to producers, and to our society in general." (page 16)
- "It is in the public interest to ensure that Ontario has
  - (a) the ability to move goods
  - (b) the flexibility to expand, contract or shift that ability in recognition of changing market conditions
  - (c) the flexibility to move goods to assist in the achievement of objectives outside the transport system

- (d) the ability to control the movement of goods so it will be
  - i) safe
  - ii) energy-efficient
  - iii) equitable in its availability
  - iv) regular and stable
  - v) affordable
- "It is the desire of this Committee to establish objectives together with policies designed to achieve these objectives." (page 20)

Accepting the above leads one to further statements of principle regarding the workings of the regulatory system.

- "The primary thrust of policy in our view should be to promote adaptability and flexibility in the economy and to provide both pressures and incentives to develop new products and services as well as new methods of production and distribution which will more effectively meet the needs and desires of society. Protected positions, whether protected by the government, by custom, or by private organization and manipulation, should be laid low and be critically examined in the light of these purposes." (page 22)
- "Licences issued under The Public Commercial Vehicles Act of Ontario should state expressly and clearly the intent of the legislation to ensure that the licensee fulfils his social obligations to serve the public interest as well as the creation of privileges to use the highways." (page 21)
- "We believe it is prudent to retain economic regulatory controls over the movement of goods on Ontario highways. To retain capability for that movement is an absolute necessity; to retain influence and control over the shape and nature of that movement is clearly in the public interest." (page 22)
- "We found no evidence to support a limitation on fleet size." (page 28)

On leasing and private carriage, the following principles were expressed:

- "We believe that the decision to become involved in private transportation is a right. The physical activity of operation on the public highway is a privilege..the decision to lease or buy is a business decision and one which this Committee would not wish to disturb." (page 26)

- "The rule must be sacrosanct that the lessee has control over the driver." (page 36)
- "Leasing connotes renting and servicing equipment only." (page 36)
- "That trip leasing be permissible where the lease, arrangement or agreement is between a truck owner who is a licensed carrier and another licensed carrier whether or not the owner has control of the vehicle and/or driver..." (page 40)
- "Our major concern is to ensure that goods move freely within and without Ontario." (page 41)
- "The answer does not lie in prosecution..." (page 42)

On the need for dialogue, the Committee stated:

- We support the concept of discussions between industry and government and urge further research." (page 51)

On energy, a crucial problem in today's complex society, the Committee stated:

- "It may be that inherent trade imbalances between areas constitute the single most important factor contributing to empty miles...Entry control, per se, is not a limiting factor at all. What may be at issue...is the scope (or lack of it) in the terms and conditions applied to an operating authority." (page 53)

Regarding the Ontario Highway Transport Board, the Committee established the following principles:

- "Applicants may retain counsel of their choice or proceed without counsel...The Board should issue written reasons for its decision upon receipt of a written request." (page 59)
- "The Board should continue to hold and where necessary to expand its hearings in the various regions of the province." (page 60)
- "The Board should be equipped for research." (page 61)
- "The Board should continue to assess costs." (page 61)
- "Trade associations should not represent applicants." (page 61)

- "Communication to the public is an important part of the availability of transportation services. Knowledge of existing facilities should be a by-product of regulation." (page 65)
- "Trafficking in licences must be discouraged...the transfer or sale of dormant licences be prohibited." (page 64)

In a more general vein, the Committee stated the following guidelines for government policy:

- "The movement of goods should be encouraged...there should be no roadblocks between provinces."
- "Rationalization of law to the benefit of carriers through a lowering of cost, particularly where it could mean more cost to the province for enforcement, should result in a reduction of tariff to the benefit of the shipping public." (page 86)
- "In addressing (safety), one must question whether government regulation by itself will provide the answers." (page 91)

A re-statement of these principles is important at this time. Not only does it begin to answer some critics of the Interim Report, but also it places the Final Report in context.

The appropriate group to implement and administer the regulatory system is the Ontario Highway Transport Board. Discussion and consultation between industry and government is vital if the process is to work. Widespread understanding of the market and the Board's activities is essential.

The recommendations of this Report must be viewed as part of a total regulatory system. That system should provide for the uniform application of rational regulatory controls. The process must be responsive to developments in the market place and it must, in its broadest terms, be a process subscribed to and controlled by the elected Government of Ontario.



It is for this reason that the Committee has written its Final Report to include its Interim Report. Virtually all of the text and all of the recommendations appear in this Final Report. Some changes are made to some specific recommendations in the first report to reflect further evidence, however the principles expressed are consistent between them. With the publication of this all encompassing Report, the Interim Report is a matter of history.



# **PART II**

## **Regulatory Framework for Ontario**





## CHAPTER 1

### THE REGULATORY BOARD

#### 1.1 An Introduction

The Ontario Highway Transport Board was established in 1955 with the enactment of The Ontario Highway Transport Board Act. The Board was designed to assume and administer the regulation of the trucking industry which prior to that time had been the responsibility of the Ontario Municipal Board. The Ontario Highway Transport Board Act was introduced on March 21, 1955 by the Honourable Dana Porter Q.C. who then remarked:

Mr. Speaker, this is an Act to establish a new board and to transfer to such board the jurisdiction now exercised by the Ontario Municipal Board, under The Public Commercial Vehicles Act and The Public Vehicles Act.

The new board is given powers substantially similar to those now exercised by the Ontario Municipal Board; in other words, the entire question of Public Commercial Vehicles and similar licences will be dealt with by this separate board, rather than by the Municipal Board as it now is.

The Board has been the subject of more debate since that time than it was during the consideration of the establishing legislation. Hansard records no discussion or debate during second reading of the Act.

Since 1955, the Board's activities have increased substantially. In 1975, it received 2,969 applications, nearly 50% of which (1,451) were under The Public Commercial Vehicles Act. The Board heard 1,217 applications in Chambers and held public hearings on 1,525 applications.

Excerpts from the Board's annual report are attached as Appendix J. They indicate by Act and class of licence the number of applications disposed of. Summary figures for the nine years prior to 1975 form part of the Appendix.

The Ontario Highway Transport Board currently employs 38 people. There is one Chairman, two Vice-Chairmen and six members.

A member authorized by the Chairman may exercise all the powers of the Board with respect to the hearing and disposal of an application or reference. A quorum of members (2) may exercise all the jurisdiction and power of the Board. A Vice-Chairman may exercise all the powers of the Chairman when the Chairman is absent, unable to act or, where there is a vacancy in the office.

The Board's staff is not structured on hard organizational lines. There is a secretary to the Board and an office manager. All staff report to the office manager who in turn is responsible to the Chairman. The Board employs one legal executive officer, a chief usher, one receptionist and six court clerks. Three people are responsible for advertisements in the Ontario Gazette. There are two file clerks and two people responsible for tariff of tolls processing. Three people handle the Board's accounting functions. There are eight secretaries.

This organization would change significantly if the Highway Carrier Office responsibilities and staff were transferred to the Board as recommended. The Committee foresees further changes.

The year 1975 marked twenty years of existence for the Board. In its 1975 annual report, the Chairman and members recounted "two

decades, the problems, the progress". It is a useful summary of just some of the Board's activities for those twenty years. In reading that report, one cannot help but notice that many of the issues with which the Committee is dealing were mentioned by the Board as problem areas many years ago.

For example, some highlights from Annual Reports of the Ontario Highway Transport Board are as follows:

- 1956 - Early in 1956 it was decided to invite representatives of all the provinces to a conference on motor transport to be held in the autumn to consider the possibility of achieving some degree of uniformity between the provinces in the field of interprovincial transport.
- 1957 - The first joint hearing of applications which affect applicants in Ontario and in other provinces was held in Toronto on March 26th and 27th. Three applications were heard by two members of the Ontario Board and two members of the Manitoba Board.
- 1958 - At the direction of the Minister of Transport, the Board examined the sufficiency of the forms of Bill of Lading and issued its report on June 5th. Reviews of a number of certificates were deemed necessary "because of operations conducted contrary to the best interests of the public".
- 1959 - Interchange of trailers was authorized between licensed carriers. "This action has reduced the loss of time created by the physical trans-shipment of goods and damage by the handling of goods and has generally effected a more expeditious movement of merchandise in the province".
- 1960 - The Board is now conducting night sessions in order to facilitate the attendance of those applicants or respondents who are owner-operators and not able to attend hearings during the course of the day because it would be necessary for them to lose a day's work .
- 1961 - A regular check was made of all records of operators, and where the Board considered it necessary, warning letters were sent out to carriers who were convicted of offences under The Public Commercial Vehicles Act, The Public Vehicles Act and the Motor Vehicle Transport Act (Canada) .

- 1962 - The length of hearings during 1962 ranged from some few minutes to one which lasted 55 days .
- 1963 - There is an increase in the number of owners of vehicles soliciting and obtaining freight on the basis of trip leases giving one shipper a lease of the vehicle where it is provided that the shipper pays directly to the driver of the vehicle on the movement from his premises and another shipper leasing the vehicle and paying the driver directly on the movement back. This may be a sophisticated method of avoiding the requirements of The Public Commercial Vehicles Act and the Department and the Board are investigating these operations .
- 1964 - It is the Board's considered opinion that the competitive aspect of transportation should be encouraged to the point where maximum service is available to the public within the economics of the area concerned to maintain a healthy, vigorous motor transport industry.
- 1965 - The proliferation of dump truck operators has tended to make this a very marginal operation insofar as the transportation of sand, gravel and other basic materials used in the construction industry. A large number of individual owners of dump trucks are scrambling for the business available from the many users of such transportation. The latter have used the availability of such vehicles to their economic advantage. These operators are of some concern to the Board since it is inevitable under the circumstances of certain rates for which they are now providing service that they use their vehicles not necessarily equipped adequately for the loads they have to carry and which in order that they may obtain some revenue requires them to operate at speeds which are detrimental to the public generally.
- 1966 - By this time the membership of the Board had been increased from three to six. "The Board sat generally in three panels in the year under review. In addition to hearings in Toronto, the Board held hearings in Belleville, Cobourg, London, Ottawa, Peterborough, St. Catharines, Sault Ste. Marie, Sudbury, Welland, Whitby, Windsor and, on a joint hearing with the Manitoba Motor Carrier Board, in Winnipeg".
- 1967 - There is a greater tendency for the different modes of transportation to coordinate their operations. The movement of goods by containers, adaptable to water and land transportation appears to have spurred this inter-modal co-operation .



- 1968 - "The Board has received an increasing number of complaints from individuals relative to their personal concern and disillusion as a result of the moving from one place to another of their household effects...In this era of more protection for the consumer, the carrier of household effects must have a greater onus put on him relative to the communications between him and the person hiring his services". This report devotes 3-1/2 pages to a discussion of leasing.
  
- 1969 - The growth in the use of illegal trucking cannot do any long term good but will disrupt and adversely affect the distribution pattern to the disadvantage of all .
  
- 1970 - The movement of people and goods is vital to our economy. The area of distribution that may be served by the producers of goods is only limited by the availability of the market based on the efficiency and economy of our modes of transportation .
  
- 1971 - The use of passenger cars to carry goods is becoming more and more prevalent. Many of the automobiles have all but the drivers' seats removed and the frames are specially reinforced and have been known to carry up to 2,000 pounds. Perhaps the time has come for the government to consider the licensing of these passenger car operators so that they will have to pay a licence fee, use a proper bill of lading, carry adequate insurance, and comply with the other requirements imposed by The Public Commercial Vehicle Act and Regulations .
  
- 1972 - The Board expressed concern for the owner-operator, who contracts to provide his vehicle to a person holding a licence under The Public Commercial Vehicles Act.
  
- 1973 - The current concern relative to sources of supply and distribution of energy may be a blessing in disguise. If the result is that the public realizes it cannot continue its profligate use of energy, if we learn to husband the energy resources available to us and if it becomes clear to all that we cannot deplete our energy sources and still have such sources available, a needed lesson has been learned". The Board suggests that "the time may now have arrived when the maximum utilization of all the space available on each vehicle moving should receive priority over speed of delivery" and also that "the cooperation of the carrier and the shipping public in providing for pick up and deliveries obviate the need for intra-urban trucks moving over the peak traffic periods...



1974 - The Board examined the creation of Regional Municipalities and observed that "if each of these Regional Municipalities have authority to license carriers within each region, it would so adversely affect the current licensees (under The Public Commercial Vehicles Act) that they could not be required to guarantee a regular service between these many communities. The volume of freight that would be siphoned off by Regional carriers, particularly in those with lighter densities of population and lesser development industrially and commercially, would make a continued regular service to many points an economic impossibility. The enforcement of any provincial legislation would be practically impossible because the municipalities are adjacent one to the next".

1975 - The effort to maintain reasonable costs of distribution of goods by motor carrier now rests mainly in cooperation between the shipper and the carrier. It is to no avail for the shipper to complain about escalating costs of transportation if the carriers must pay for unproductive hours while their personnel and equipment sit and wait at the various docks for extended periods of time in order to deliver or pick up the goods of the shipper .

The Board has been relatively well-informed at an early stage of both the developments within and the needs of the transportation industry. This is not only a compliment but also a responsibility. A regulatory body must have the expertise to anticipate, recognize and understand trends and market forces which will affect either the industry it regulates and/or those served by the regulated industry.

Readers of the Interim Report will have noted the Committee's resolve that the Ontario Highway Transport Board should continue.

In concluding that a regulatory agency is the appropriate type of organization through which to regulate the Ontario trucking industry and in recognizing the need for a regulatory agency to anticipate changes in trends, the Committee recognizes the inherent difficulties. They are particularly acute in terms of the relationship between the Minister of Transportation and Communications, the Ministry and the Ontario Highway Transport Board.

## CHAPTER 2

### THE THEORY OF REGULATORY BODIES

#### 2.1 General

A great deal of work has been done in recent years regarding the role of regulatory agencies in government. Much work has been done in Ontario with specific reference to the provincial government.

One of the most substantive reports was published in June 1974 by the Management Board of Cabinet and entitled Agencies, Boards and Commissions in the Government of Ontario. This particular study was undertaken as part of the review of the Report of the Committee on Government Productivity (COGP), also undertaken for the Ontario government.

In its report, COGP commented on the role of agencies within the structure of government. The COGP recommendations in this area are attached as Appendix K. The report recommended their continued use, but also suggested the need for their evaluation. The subsequent Management Board report was concerned with two aspects of what it termed special purpose bodies:

1. What they are and how they should be used.
2. How should they be related to the government and what means a Minister has at his disposal to ensure that he retains adequate policy control over them.

Ministries are a conventional structure of government. The ministry has evolved

in a hierarchically structured form with formal codes of managerial behaviour, common facilities, sophisticated interrelational networks and a unified system of employment. It is clearly identifiable as government geared to be directly responsive to the political framework in which it operates and to the politicians which are its leaders...

On the other hand, there are the boards, commissions and agencies which have been formed to accomplish certain tasks. These have their own special place in the process of government.

Three major categories of agencies have been identified - regulatory, operational and advisory. While COGP tended to try to draw clear lines between the various types in each of these categories, it is difficult to do so with any precision. The Management Board study identified seven basic types of regulatory agencies. It indicated that while some existing agencies fell into one category or another, others combine characteristics of more than one type. The report stated: "This (combination) is not necessarily undesirable, however, it is desirable that their role is clearly understood and their powers are equal to their role."<sup>3</sup>

The Ontario Highway Transport Board is first and foremost a regulatory body. The Board has a number of responsibilities and/or functions. It is a licensing body, a negotiation board and an arbitration board. Its activities are partly judicial. Its activities also create an environment for professional self regulation within the trucking industry.

These are broad comments, but the Committee believes it is important that its view of the roles and responsibilities of the Ontario Highway Transport Board be understood clearly if recommendations about it are

to be properly assessed. When the Board was established, it was perhaps not contemplated that it would grow to have the roles and the influence it has today. The Ontario Highway Transport Board Act was passed in 1955 and has been the subject of one major substantive amendment since that time which reflected the provisions of the Statutory Powers and Procedures Act. (Statutes of Ontario 1971, Chapter 50). To the Committee's knowledge, neither the Ministry nor the Government has reviewed the role of the Ontario Highway Transport Board in response to the COGP report or the report of the Management Board. Many of the recommendations of the McRuer report remain unimplemented. Therefore, the Committee in making statements about the Board, is not criticizing or evaluating a past government policy in this area but rather a lack of it. The Committee comments on the roles of the Board as they have developed, and as they should be.

The types of regulatory agencies identified in the Agencies, Boards and Commissions study (with the addition of advisory agencies) are as follows:

1. A Regulatory Commission

- has relatively broad regulatory responsibility
- the agency is responsible for developing policy and applying it to individual cases.

e.g.     The Ontario Energy Board  
           The Ontario Municipal Board  
           The Ontario Highway Transport Board



2. Judicial

- adjudicative role leads to relatively formal and legalistic procedures
- is more legally oriented
- e.g. : Commercial Registration Appeal Tribunal  
Land Compensation Board  
Riding Horse Establishment Licence Review Board

3. Arbitration and Negotiation

- provide a means of assisting participants in a dispute
- e.g. : Hospital Arbitration Board
- while arbitration boards can impose binding decisions, negotiation boards have the authority only to work with the two sides to help them come to a satisfactory agreement
- e.g. Education Boards of Reference

4. Professional Self Regulatory

- prescribe correct standards of professional behaviour
- provide a disciplinary process for member alleged to have failed to meet the required standards
- establish entrance requirements
- plan the volume and direction of the growth of the profession as a whole
- e.g. The Law Society Council  
Council of Professional Engineers

5. Licensing

- self explanatory
- e.g. The Liquor Licence Board of Ontario



6. Marketing

- introduce stability into an otherwise volatile market thereby ensuring an adequate return for the producer and long term security of supply for the consumer.
- e.g. The Milk Marketing Board

While the traditional definition of the Ontario Highway Transport Board would describe it as a regulatory commission, this Report takes a much broader view of its activities and responsibilities.

2.2 The Pros and Cons of Agency Use

Agencies offer the opportunity to introduce special benefits which cannot be gained by civil service administration. These include:

1. The agency can be a specialist body with experts in the field so that the government may keep up to date on new trends and information.
2. An agency can be more flexible, because its management falls outside the restrictive system of the civil service. This can foster a sense of management innovation and independence.
3. An agency can provide opportunities for participation, reduce the pressures on government's own decision-making responsibilities and reverse the perception and/or reality of centralization.

The Management Board Report identified further potential benefits which could accrue from an agency bridging jurisdictional boundaries, having a separate legal identity and attaining neutrality for quasi-judicial decisions.

This last point is most important.

While the government is responsible for determining the legal rights of individuals or for laying down broad policy for regulatory activity, it is desirable to preserve independence and therefore neutrality when individual cases are considered. Agencies have been used as a device to obtain separation and quasi-judicial neutrality because they may be given the requisite degree of freedom from intervention. At the same time, they may also develop expertise in the area under regulation. These particular functions cannot be handled by the conventional judiciary because of requirements of special technical expertise and because in many areas policy flexibility is required which would be destroyed either by the need to incorporate detailed policy into laws or regulations or by the strict enforcement of legal precedent and the other highly stylized procedures...which a court of law follows.<sup>4</sup>

In recognizing the potential benefits of agency use, one must also examine the potential problems. Agencies, for the same reasons that they should be independent, can become remote from the mainstream of government activity and policy.

An insular situation can be dangerous because the agency at the best is unaware or poorly informed of new government information, policy or direction.

This means that an agency could develop policy reactively and in an ad hoc fashion.

Comprehensive policy-making and administration require that decisions be based on all available information and coordinated. If these requirements are not met, policy cannot be evaluated and the government's investment in the agency or the administration of a program cannot be properly evaluated. Public policy formulation and program delivery responsibilities can be fragmented, leading to inefficiencies, redundancies in organization and unnecessary expenditures which are a disservice to the people of Ontario.

One basic problem with the agency concept was identified by the Management Board:

There has been no clear definition of the relationship between a minister and his agencies...although a basic principle of government responsibility for agencies has always been recognized, the existence of an "arm's length" relationship has also been acknowledged or advocated without a clear definition of where the government's<sub>5</sub> responsibilities end and those of the agency begin.

### 2.3 The Minister - Agency Relationship

COGP recommended that all agencies report to the Legislature through a Minister. This is fundamental to the concept of a ministry.

Policy control is comprised of priority setting, planning and the evaluation of performance. Control is thought of not as requiring ministerial or governmental approval to every action taken by the agency, but as "ensuring that a Minister is clearly in overall command of agencies in a corporate sense, determining the objectives and general strategies and being informed of overall progress.." <sup>6</sup>

The Committee agrees. Policy setting must be responsive to changes in public desire, to changes in industry and to the state of the art with respect to the industry being regulated. The Government, through the appropriate Minister, must be responsible for the broad policy impacts of a regulatory agency's actions.

However, the agency must be autonomous day to day to administer its policies without political interference. While this is far from a revolutionary concept, the Committee believes strongly in the ultimate responsibility of the Minister for overall policy formulation.

The Ontario Highway Transport Board exists through the authority

of its own Act. This Act and The Public Commercial Vehicles Act give to the Minister the authority to issue licences, which means he can reflect government policy in reaching a decision on whether or not to issue any licence. There is nothing in either act which gives the Minister either formal power or responsibility to invoke promotional policies or to take an active role in establishing guidelines for the Board. The Minister's statutory role is purely reactive, a situation which should be corrected.



## PART II - CHAPTER 2

### REFERENCES

1. Agencies, Boards and Commissions in the Government of Ontario; Management Board Policy Division, Management Board Secretariat, June 1974, Page (i).
2. Ibid, Page 1.
3. Ibid, Page 59.
4. Ibid, Page 20.
5. Ibid, Page 2.
6. Ibid, Page 28.

## CHAPTER 3

### MINISTER - ONTARIO HIGHWAY TRANSPORT BOARD RELATIONSHIPS

#### 3.1 Current Relationships

There is no statement of mandate in The Ontario Highway Transport Board Act with respect to the duties and responsibilities of the Board. The Act sets out certain powers of the Board relating to such things as witnesses and hearing fees. It sets out the composition of the Board and requires annual reports, etc. Furthermore, it gives the Board the authority to hear and determine all questions of law or fact as to all matters within its jurisdiction. It does not define what "falls within its jurisdiction".

For an expression of mandate, one must turn to The Public Commercial Vehicles Act (and The Public Vehicles Act). In terms of the Board's authority, section 6 of The Public Commercial Vehicles Act is perhaps most relevant.

- (1) Except under clause a of subsection 1 of section 5, the Minister shall not issue an operating licence to any person, unless the Board, upon the application of that person in the prescribed form has, after a hearing of the application as required by The Ontario Highway Transport Board Act, approved the issue of the licence to him on the ground that public necessity and convenience warrant the issue of the licence and will be served thereby, and has issued a certificate to that effect to the Minister.
- (2) The Board may, in a certificate issued by it under this section, having regard to the requirements of public necessity and convenience,

- (a) prescribe terms and conditions to govern the transportation of goods by public commercial vehicles pursuant to the licence; or
  - (b) approve the conferring by the licence of special, exclusive or limited rights with respect to the operations of public commercial vehicles and with respect to any highway or highways or portions thereof described in the certificate.
- 1971, c.50, s.71, (4)

Other sections enable the Minister to refer cases to the Board for a hearing. This applies, for example, in cases of transfer of shares, where the Minister wishes terms and conditions of the licence to be reviewed. Otherwise, the Board is given no direction as to the policies to be followed. The Board is thus "required"(we will examine this later) to hold hearings in certain situations and to report to the Minister "having regard to public necessity and convenience" and to accept filings of tariffs.

The Board has wide discretion to determine public necessity and convenience. This is dealt with in Chapter 4 of this Part. The Minister has no express authority to define actively any condition or set of conditions which should be considered. The Minister has the ultimate authority to accept or reject a finding of public necessity and convenience by the Board as only the Minister has the authority to issue licences. The Minister cannot issue a licence without a certificate of public necessity and convenience from the Board. He has no explicit authority or responsibility to refuse to issue a licence, however, other than through section 5(1) (b) which states that the "Minister may issue an operating licence in accordance with a certificate of necessity and convenience".

In the case of a freight forwarder's licence, the Minister's authority is narrower because "he shall issue" the licence in accordance with a certificate from the Board (Section 12e).

It is an anomaly that, while the Minister has the authority to issue licences, he cannot do so unless the Board has "approved" the issue of the licence. It is curious wording that results in the Minister's action of issuing having to be "authorized" or "approved" by the Board. While this may have no substantive effect on the overall system, it is indicative of the fact that these Acts need review. The Minister should more properly have been empowered to issue, or not issue, on the "recommendation" of the Board. This is the case on a review of licence (Section 8) and in cases where the Minister is considering suspension, cancellation etc. (Section 12(1) (8)).

Section 8 provides that the Minister may "recommend" that the terms and conditions of a licence be reviewed and the Board "shall after a hearing of the reference as required by The Ontario Highway Transport Board Act report thereon to the Minister". However, there is nothing in the Board's Act to require a hearing to be held.

The Board also has the authority to place terms and conditions on an operation being approved and to confer "special, exclusive or limited rights". There is no comment in law to define further the Board's abilities in this area. Additionally, the Minister has no expressed authority over those terms and conditions. He cannot define them; he cannot approve them, except by implication, and he cannot overrule

them. The use in law of the word "rights" serves to distort the true nature of the licence being issued. "Privileges" would be a more appropriate term.

The Committee stated on page 21 of the Interim Report:

For instance, licences issued under The Public Commercial Vehicles Act of Ontario should state expressly and clearly the intent of the legislation to insure that the licensee fulfils his social responsibilities. The operating authority implies obligations to serve the public interest as well as the creation of privileges to use the highways.

### 3.2 An Improved Relationship

The Minister must have policy control over the Board. He must not interfere in decisions of the Board but in the end, it is he who must answer for them to the people of Ontario.

A government is elected to run the province rationally. A government is continually defining plans and striving towards certain goals which it feels are in the public interest. The establishment of goals and objectives is an integral part of corporate and public administration. A government is answerable to the public on the basis of the objectives it sets, the way in which it tries to achieve them and the success of those efforts.

In looking at a particular industry or a system of industries - in this case the movement of goods - government should set objectives (dealing with for example rate levels, efficiency and energy consumption) with regard to the functioning of the industry itself and objectives



(such as regional development) outside that industry which can be met more easily and efficiently with the proper cooperation, control or structure of that industry.

Objectives must be set for the transportation industry just as they are set for other sectors of public policy. As noted in the Interim Report,

We have been unable to find clear objectives in the Public Commercial Vehicles Act of Ontario. Constant amendments have been of the....patchwork variety. The legislation requires revision. (page 21)

It is inappropriate that the Government has no public policy for the highway transportation industry. There are no quantifiable objectives of which the Committee is aware. Even if there were, the Government could not, without revisions to the statutes, legally require the Board to consider those objectives in its findings.

Given that the Government in principle should have this ability and that it is practical to do so, the Acts should be amended to provide for it.

The Government has had input to the Board's activities and policies in the past. However, the input should flow the other way. The Board should be independent on a day to day basis, but on matters of significant public impact, the Board should have input to government policy making, not vice versa.

The Chairman of the Board has through his tenure made several comments in this area.

He noted in a memorandum of 1958 that "while realizing that authority has been delegated to the Board, we are quite conscious that the responsibility has not...and that ministerial responsibility must invariably be preserved."<sup>1</sup>

In his appearance before the Committee in June 1976, the Chairman was questioned on the matter of who sets the policies of the Board.

He responded in Part:

I've got to say honestly, the Board as a whole sets policy based on reference to its own Act...other than that, I have to say that the Board dictates pretty well its own policies (however) major issues that will affect the transportation policy of the Province of Ontario, are never decided by the Board alone. They are decided by consultation, sometimes with the Prime Minister of Ontario in conjunction with the recommendations from the Department and the Minister of Transport... in other words, the ordinary day to day problems we handle ourselves, but with something that we feel is going to have an effect generally on the Government of Ontario and its people, then we go to the Department <sup>2</sup> level...then maybe to the Minister, then if necessary to Cabinet.

This Report does not presume to suggest what government objectives outside of the transportation system should be. There are commonly shared commitments to some, including reduction of regional trade imbalances within the province, the establishment of more secondary manufacturing capability in Ontario. Still others may be high levels of domestic entrepreneurship, ownership and employment within and of Canadian business, including the transportation sector.

The ability to move goods by highway will play a role in the achievement of these and other goals. Governments must analyze the way and the degree to which it can contribute and policies must be set in place to encourage that contribution. The Government must then state clearly those policies and objectives. It must be able and willing to evaluate those policies - to ascertain how well they work.

If government is to approach transportation in the province this way, then it must depend on civil servants and regulatory agencies to give effect to those policies. While individual cases must be devoid of political interference, the deliberations of the Board at all times must consider and reflect the policies regarding truck transportation to which the government is committed.

Since the Minister is the principal source of transportation policy advice to the Government, relevant statutes should be clear and afford a public method of providing policy direction to the administrators of policy - in this case, the Ontario Highway Transport Board.

It may seem that the Committee is in favour of more direct government involvement in the trucking industry. As a rule, this will not be necessary because market forces and the capabilities of the businessmen who own and operate the industry will to the largest degree result in a service consistent with the law and serving of the public interest. The service that the market place demands and supplies will in most cases produce a truck-transportation capability to service Ontario's economic and social structures properly. It is only by exception that specific government policies need to be promotional to meet a specific objective. Government must recognize that within the trucking industry "there is a wide range of facilities and services operating under different degrees of maturity and competition. It must enable each (situation) to be treated in an appropriate manner..."<sup>3</sup> Government policies towards the trucking industry must allow the Board the flexibility to deal with this diversity and provide the leadership to ensure that they are consistently applied.

There are a number of implications which flow from the positions stated. It is clear that we foresee a need to amend The Ontario Highway Transport Board Act and Public Commercial Vehicles Act to allow the Minister the formal ability to direct general policy to the Board.

Theoretically, the power of appointment should give the Government some control over the Board and its policies.<sup>4</sup> In the Committee's view this is not sufficient.

Present truck transportation rules exist in the form of law in The Public Commercial Vehicles Act and its Regulations. All law relevant to the discussion is approved by the Minister. This affords the Minister the ability to set policy by legislation, however this is an inflexible mechanism.

The budgetary process as well affords the Minister and the Legislature some control over the Board. Funding for the Board is included with the Ministry's estimates, giving the Minister an annual opportunity to review its operation and organization. The same opportunity is afforded the Legislature when the Ministry's estimates are considered. The Ontario Highway Transport Board, its organization, procedures and policies are questioned each year, and in the past several years, when the Ministry's estimates have been considered in Committee, the Chairman of the Board has been personally present to respond to Members' questions. Notwithstanding this control, the responsibility of the Legislature should be strengthened.

The Committee notes the recommendations of the Select Committee on the Fourth and Fifth Reports of the Ontario Commission on the Legislature



to expand the role and responsibility of Standing Committees, particularly in consideration of ministry estimates. The proposed large standing committees with the power to appoint small sub-committees for special studies would permit more frequent review of agencies such as the Ontario Highway Transport Board which report to the Legislature through a minister.

The Board's annual report is filed with the Minister. Theoretically, this gives the Minister a further opportunity to review the activities of the Board. The Ontario Highway Transport Board's report, however, while tabled in the Legislature by the Minister, is signed by the Chairman of the Board and not by the Minister.

While not suggesting political interference with the Board, the Minister has informal powers of persuasion and influence in his dealings with the Board. It is clear that if the Board consults the Minister or the Premier from time to time, then the ultimate action which flows from the Board will reflect that consultation. The powers of persuasion in such cases can be great. The Committee refers to the Agencies, Boards and Commissions report on this subject:

A Minister's powers of persuasion have often been used as a means of transmitting a forward looking comprehensive policy to an agency, but on an ex-post, reactive and possibly detrimental basis. Ex-post, because the Minister's involvement tends to come after some specific action has been taken, not, while it is being planned. Reactive, because the intervention in the agency's affairs often results from some conflict between the agency (or its decision) and some third party, not from any perception of an emerging problem by either agency or Minister.. a short term solution (may be found) but only at the cost of reducing the potential for long term policy development coordination...



More is needed in this area than is currently afforded. The Minister must be able to identify certain areas in which he should be involved.

The procedures required must be firmly established and yet be flexible enough to reflect the vitality of the trucking industry. The Committee's recommendations do not negate informal exchanges between the Minister and the Board, rather they encourage them. Neither do they make the Board less responsible to keep informed independently of government policy and general economic and social conditions. However, the fundamental policies set by the Government and communicated to the Board through the Minister, must be the subject of public statements. Such statements would appropriately be made by the Minister to the Legislature.

If the Minister is to direct the Board to consider certain policies or to react to a public emergency in a particular fashion, he must base that direction on firm and reasonable information. As the Board needs direction from time to time, the Minister needs advice on the trends of the industry and the likely impact of proposed policies. The implications of a mistaken policy direction could be extremely severe.

Chapter 6 of this section and Part V under Education deal with various aspects of the general need in Ontario for data, research and expertise regarding the transportation of goods. This need will be felt by the Minister who faces a decision of major policy direction to the Board. The Committee believes that only a part of the necessary information can conceivably reside with the Ministry and the Board. Some but not all expertise must reside in these organizations. Part of the information on which a government must rely in transportation policy decisions now exists outside government. The management expertise to interpret this information and therefore to assess proposed new

policies exists with consumers, shippers, truckers and labour organizations. It has been and always will be thus.

Those in industry should have an ability to assess the impact of proposed government policies. A Minister is a wise one who pursues this course now. Dialogue between government and industry concerned with transportation should be promoted, facilitated and formalized.

An advisory group consisting of representatives from the for-hire and private truck transportation firms, the shipping and consuming public and labour could be of significant benefit to a Minister of Transportations and Communications by advising him on the complexities of the transportation field and the likely economic consequences of particular actions. Advice from such a group would augment that given to the Minister by the Board or Ministry officials.

Formal consultation with such a group prior to directing the Board on a matter of broad policy would serve the people of the province and the Government well. Only after such formal consultation would the Minister indicate publicly and to the Board that a new policy is to be pursued.

### 3.3 Recommendations

If the Board is to play a significant role within the context of a ministerial portfolio, legislation and procedures must be developed to ensure that the agency will be an effective mechanism for program delivery.

The Committee recommends that the appropriate statutes be amended to provide that the Ontario Highway Transport Board:

1. is constituted to serve the public interest by acting on behalf of the Minister to promote and ensure to the extent of its powers a truck transportation system which is efficient and viable and provides service to all parts and shippers of Ontario where it is needed at the lowest possible cost;
2. will hold an advertised public hearing or a hearing in Chambers when and where it is required by law or when and where the Minister requests it;
3. will find and inform the Minister whether public necessity and convenience is served or not served by applications before it where required by law or requested by the Minister;
4. will report on facts, trends or situations as requested by the Minister;
5. will consider, in its findings of public necessity and convenience, such facts and criteria as the Minister may from time to time publicly direct in accordance with provisions 7, 8 and 9 below;
6. where a decision of the Board is contrary to the intent of any facts or criteria directed by the Minister to be considered, the Board will report its reasons to the Minister.

Further, the appropriate statutes should be amended to give effect to the following principles:

7. the Minister may from time to time require the Board to hold a hearing or investigation and to report to him on such terms and conditions as he specifies in writing to the Board, and
8. The Minister may appoint an Advisory Council with selected representatives from the private sector who possess a special expertise in the field of transportation.

9. the Minister may from time to time, provided that he has informed and consulted with the Advisory Council, direct the Board to consider such facts and criteria, circumstances, laws or policies in future hearings or investigations or in its determination of public necessity and convenience, provided further that such directions are public knowledge.

It is also recommended that -

10. the Minister and his senior staff establish and maintain a forum for regular joint discussions with the Chairman and other members of the Ontario Highway Transport Board and senior staff to discuss and assess policies and practices of the Board.

## PART II - CHAPTER 3

### REFERENCES

1. Shoniker, E.J., A memorandum to the Honorable John Yaremko, Q.C., 1958.
2. Shoniker, E.J., In oral testimony, June 29, 1976.
3. Marchand, Honorable Jean, Minister of Transport Canada, In a M.O.T. News Release - Directorate of Public Affairs, August 7, 1975.
4. Op Cit., Agencies, Boards and Commissions, Page 33.
5. Op Cit., Agencies Boards and Commissions, Pages 38 - 39.



## CHAPTER 4

### PUBLIC NECESSITY & CONVENIENCE

#### 4.1 Introduction

In the case of new applications for authority, the Ontario Highway Transport Board is empowered to determine whether the licence is a privilege warranted "on the ground that public necessity and convenience warrant the issue and will be served thereby", (Section 6, PCVA). In addition it is the test of public necessity and convenience which must be met before transfer of an operating licence will be approved, but in a negative sense. The applicant must show that public necessity and convenience "will not be prejudiced" by the transfer. Section 7(2) of The Public Commercial Vehicles Act therefore, assumes that public convenience and necessity was being served by the transferor.

The Minister may refer at any time an operating licence to the Board with a recommendation that "the terms and conditions of the licence be reviewed having regard to the requirements of public necessity and convenience". (Section 8, PCVA).

Similarly, a freight forwarder's licence can be issued only if public necessity and convenience will be served. (Section 12f, PCVA).

Sections 10 and 12h of The Public Commercial Vehicles Act set down conditions for which the Minister may suspend or cancel an operating or freight forwarder's licence. When the Minister proposes such action or proposes to refuse or to cancel a vehicle licence under Section 12c, he must give notice to the party directly concerned, who has a right to a hearing before the Board. If this right is exercised, the Board holds a hearing and is bound to report to the Minister on "its findings of facts and conclusion of law and its recommendations as to the issue, suspension, or cancellation of the licence to which it relates". (Section 12(i)(8)).

The Board may, by virtue of the powers contained in Section 17 of its own Act, "rehear any application and may review, amend or revoke its decisions, orders, directions, certificates or approvals..." In doing so, it need not apply the test of public necessity or convenience.

There is no mention in the Board's Act of public necessity and convenience.

In any hearing or determination, the Board may "as to all matters within its jurisdiction hear and determine all questions of law or fact", (Section 16, Ontario Highway Transport Board Act).

Taking these provisions together, it follows that:

1. the test of public necessity and convenience must be met to obtain a new licence, new privilege or extension to an authority;

2. a "reverse test" must be met by the proposed transferee - his holding of a licence must not prejudice the public necessity and convenience which, it is assumed was existing and being served by the very existence of the licence in the transferor's name;
3. in any test of public necessity and convenience, the Board may use any fact or decide any matter of law within its jurisdiction.

It is generally stated that the law contains no definition of public necessity and convenience to guide the Board. However, it appears from the above excerpts from The Public Commercial Vehicles Act that certain tests do exist.

Based on the provisions regarding licence transfer it must be assumed that the existence of a licence by itself implies that public necessity and convenience is being met.

The specific conditions which are grounds for the Minister to recommend a review of licences follow:

10. Subject to Section 12i, the Minister may suspend or cancel an operating licence,
  - (a) where the licensee fails to begin to provide transportation services in accordance with the licence within thirty days after the issue of the licence, or within such further period as is specified in the licence;
  - (b) where the licensee fails for a continuous period of thirty days to provide transportation services in accordance with the licence;
  - (c) where the licensee is financially incapable of providing or continuing to provide transportation services in accordance with this Act and the regulations or the terms and conditions of the licence or of meeting his financial responsibilities to persons using such services; or

- (d) where the licensee or any person under his control and direction contravenes this Act or The Highway Traffic Act or the regulations hereunder or thereunder or the terms and conditions of the grounds for believing that the transportation services required by the licence will not be carried on in accordance with the requirements of such Acts or regulations or such terms and conditions.

12h Subject to Section 12i, the Minister may suspend or cancel a freight forwarder's licence,

- (a) where the licensee fails to maintain in force a policy of insurance or bond that meets the requirements of this Act or the regulations; or
- (b) where the licensee or any person under his control and direction contravenes this Act or the regulations or the terms and conditions of the licence and such contravention or failure affords reasonable grounds for believing that the business of a freight forwarder will not be carried on in accordance with the requirements of this Act and the regulations and the terms and conditions of the licence.

Where a hearing is sought by the licence holder, the Board is not bound to report to the Minister on the grounds of public necessity and convenience. It may be implied by the above sections that the existence of any one or more of these conditions gives the Minister sufficient cause to suspect that public necessity and convenience is no longer assumed from the simple existence of the licence. These conditions are legally established and implicitly set out some of the foundations of public necessity and convenience or the lack thereof.

#### 4.2 Definition of Public Necessity and Convenience

Notwithstanding the Committee's reasoning in Section 4.1 above, the question of whether public necessity and convenience can or should be defined in a more formal manner has been an important issue in this inquiry. It has been suggested by some members of the legal profession that it should be. The lack of definition can lead to less objective findings of public necessity and convenience. This was a foundation of the arguments in favour of "deregulating" entry. Other learned counsel and other groups took a diametrically opposed view.

This question is particularly vital given the Committee's recommendations with regard to Government control of the policies applied by the Board as discussed in Chapter 3.

The Board should provide information relevant to its procedures and policies. The Government must establish broad policy, yet the Board must have flexibility in its decision making power to reflect the constantly changing needs of shippers and of the trucking industry itself. A delicate balance must be found.

There appear to be at least two ways to clarify the meaning of public necessity and convenience. One is ex ante, the other is ex post. In the former, definitions would be established by the Government, in law, or through policy statements. In the latter, definitions would evolve from Board decisions.

The Committee presents the following excerpts from cases involving findings of public necessity and convenience:



Many and varied are the definitions of convenience and necessity which Courts and Commissions have propounded. In the first place the convenience and necessity which is to be considered is that of the public and not of private individuals. In this connection we are also of the opinion that it is the consuming and patronizing public and not the general public which is to be considered. <sup>1</sup>

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The phrase, "public necessity and convenience" appears...in other provincial and federal statutes and it would, I think, be both impractical and undesirable to attempt a precise definition of general application of what constitutes public convenience and necessity. As has been frequently pointed out in the American decisions, the meaning in a given case should be ascertained by reference to the context and to the objects and purposes of the statute in which it is found. <sup>2</sup>

- - -

The distinguishing mark of an administrative tribunal is that it possesses a complete, absolute and unfettered discretion and, having no fixed standard to follow, it is guided by its own ideas of policy and expediency. Hence, acting within its proper province and observing any procedural formalities prescribed, it cannot err in substantive matters because there is no standard for it to follow and hence no standard to judge or correct it by. <sup>3</sup>

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In discussing the activities of the Board of Railway Commissioners, the Supreme Court of Canada said: "The Board is not bound by the ordinary rules of evidence. In deciding upon questions of fact, it must inevitably draw upon its experience in respect of the matters in the vast number of cases which come before it as well as upon the experience of its technical advisers". <sup>4</sup>

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Where a regulatory tribunal acting within its jurisdiction makes an order in the public interest, with the experience and understanding of what that interest consists of, in a specialized field accumulated over many years, the Court will be especially loath to interfere. <sup>5</sup>

In 1956, the Ontario Fuel Board refused an application on the grounds that public convenience and necessity were not shown. An appeal was taken to the Court of Appeal of Ontario - where the tests and considerations before the Board were re-examined, and a reassessment made of their weight and value. The Court of Appeal came to the conclusion that a case of public convenience and necessity had been made out. The judgement, accordingly, directed the Board to issue a certificate of approval. A

further appeal followed to the Supreme Court of Canada. There, J. Rand observed:

What the Court (of Appeal of Ontario) did was to exercise an administrative jurisdiction and to substitute its judgement on the application for that of the Board. In this I think it exceeded its powers...It was argued, and it seems to have been the view of the Court (of Appeal of Ontario), that the determination of public necessity and convenience was itself a question of fact, but with that I am unable to argue: it is not an objective existence to be ascertained; the determination is the formulation of an opinion, in this use, the opinion of the Board and the Board only. <sup>6</sup>

The Supreme Court of Canada reversed the Court of Appeal of Ontario and restored the order of the Ontario Fuel Board.

The Courts have generally ruled that while a finding of public necessity and convenience may include consideration of objective facts or law, it is largely a subjective test. As such, it is the rightful jurisdiction of the agency with the authority to determine what constitutes a meeting of public necessity and convenience. These criteria may vary from case to case.

On one hand, it is the jurisdiction of the Board to determine public necessity and convenience in a case involving operating authority under The Public Commercial Vehicles Act. On the other hand, both the Minister and the Lieutenant Governor in Council currently have the power to negate a Board decision that public necessity and convenience has been met. The Public Commercial Vehicles Act thus provides for a determination of public necessity and convenience by other than the Board.

Groups in the past have supported the concept of some further definition of public necessity and convenience. The Ontario Highway Transport Board in its 1966 report to the Minister of Transport stated:

The Public Commercial Vehicles Act in Section 4(1) provides for the issuance of a public commercial vehicle operating licence by the Minister of Transport for Ontario upon receipt by the Minister of a certificate of public necessity and convenience from the Ontario Highway Transport Board.

The term "public necessity and convenience" is not capable of exhaustive and complete definition. It is an administrative test based upon administrative and economic factors as they may exist at a given time.

The Board has tried wherever it has been possible to do so to be consistent in its decisions having regard to all the facts. It has besides attempted to make known what factors guide the Board in determining whether the test has been satisfied on an application before it. We are of the view that The Public Commercial Vehicles Act should contain a section in which some attempt would be made to define the term or at least list the elements going to the Board's consideration. Submissions were received in this regard and we believe that the inclusion of such a section in the statute would facilitate public understanding of the term.

It should be stated here that The Ontario Highway Transport Board is in the process of having its major decisions, given since the creation of the Board, published so that the same will be available to the legal profession and to the public.

The new section should be inserted immediately after Section 4 (1) which makes mention of the certificate of public necessity and convenience. A draft of the proposed addition is submitted below.

In granting or refusing a certificate of public necessity and convenience the Board may have regard to the following matters,

- (a) the transportation requirements of persons supporting the application,
- (b) the public interest in an adequate and efficient system of for-hire motor truck transportation,

- (c) the financial stability and the operating record of the applicant,
- (d) the effect that the application if granted would have upon the transportation economy of the Province of Ontario,
- (e) any other matters which the Board may deem relevant.<sup>7</sup>

The recommendation has not been adopted by the Government.

Jurisdictions which have tried to define the terms in law have encountered significant difficulty. If the terms of public necessity and convenience are set down in law, either the Board's flexibility is lost or the provisions will be so broad as to be meaningless. If they are set down explicitly, then the Board is bound to consider them. Such a situation could give rise to frequent appeals to the court on matters of law.

Chief Justice McRuer stated in the Report on Civil Rights, Report 1:

Administrative power may be conferred on a special tribunal rather than on a Minister, where the matter to be decided requires specialized technical knowledge and full and detailed inquiries into the facts of each case before a decision can be made (for example, the granting of certificates of convenience and necessity). The general policy to be applied in making the decision should be expressed in the statute....even in these cases, decisions should be a right of appeal to the Minister or to a committee of the Lieutenant Governor in Council...<sup>8</sup>

The decision should be enforceable in the same manner as an order of an ordinary court..<sup>9</sup>

Written reasons for the decision should be given in all cases if required.<sup>10</sup>



Confusing the issue is the treatment of public necessity and convenience in general terms. The criteria to be applied and the standards to be met are not the same for applications to all segments of the trucking industry as currently classified. It may be possible to establish more objective tests and standards for particular parts of the industry and for particular licence class applications which reflect the uniqueness of that particular part or class. Related to the question of what has to be proven, is the matter of how it is to be proven. Procedures have their effect on the test and the nature of the test will in large part determine the procedures.

There are general observations which may be made, based on the evidence heard by the Committee and by staff investigations;

1. Public necessity and convenience is to be distinguished from private necessity and convenience. In other words, the profit or loss of the individual applicant or respondent is not the governing factor but neither is it a deterrant.
2. Necessity and convenience are to be read together. It must be shown that both factors exist. Convenience alone given current law should not be sufficient by itself to conclude that the test is met.
3. Both present and future necessity and convenience may be considered.
4. Necessity is not to be construed as a matter of life and death, but rather economic, mercantile or commercial necessity.



5. The "public" is not likely to be the entire public but rather that part of the public which ships or receives goods. Thus, it may be said that more importance is attached to the user of transportation rather than to the supplier of transportation. The Committee has heard observations to the effect that "the user of transportation is the master, the supplier of transportation is the servant. The supplier cannot become master without dire consequences."

The phrase of public necessity and convenience may have different meanings at different times and places. A certificate of public convenience and necessity may be issued for example,

1. on production of a school bus contract,
2. on production of a letter from a highway superintendent,
3. on filing of an agreement between vendor and purchaser of a transport business, and an indication that the debts of the vendor are to be paid in full,
4. on filing affidavits, or
5. proof of compliance with treaty obligations (Class L).

Moreover, the degree of evidence required to establish public necessity and convenience may vary according to,

1. the extent of the application,
2. the extent of the opposition to the application, and
3. the nature of the operating authority sought. For instance, applications for the movement of used household effects are rarely supported by housewives, but are frequently supported by the clergy, the local Board of Trade, and character witnesses - none of whom have furniture to ship.
4. the past record of the applicant.

Keeping with the Committee's previous discussion on the responsibilities of Government for broad policy, it is conceivable that the

Minister's publicly announced policy directives will serve to guide the deliberations of the Ontario Highway Transport Board. For example, public policy direction could be given to the effect that the Board should consider,

1. the evidence of running light or empty,
2. ability to transfer loads between carriers who were previously forbidden to transfer goods from carrier to carrier (Class C),
3. the need for more competition in a given area,
4. the relationship between the owner of the vehicle and the owner of the goods. Thus, if there is a parent and a subsidiary associated or allied company, it may be an easy task to obtain a certificate or a licence authorizing the parent to carry the goods of the subsidiary, or as the case may be,
5. the need for regional development,
6. peak seasonal loads in agriculture,
7. emergency situations such as fire or earthquake, or
8. whether temporary authority is to be issued during a postal strike, or during a railway strike or any labour dispute.

It may be assumed that the parties who oppose applications for new licences or extensions of existing licences will always contend that the existing facilities are adequate and that there is no public convenience and necessity for new or additional services. It must be borne in mind that the Ontario Highway Transport Board does not feel bound by its own precedents. This creates uncertainty in predicting the results of any given set of facts. However, if as in the case of household goods carriers, there is difficulty in obtaining support for

an application from former customers, it is to be expected that a somewhat different standard of necessity and convenience will be adopted by the licensing authority.

As a general rule, competition between for-hire trucking companies has been considered as desirable in the public interest. In the field of passenger transportation, that subject is under debate and the Committee expressly refrains from comment. In the transportation of goods, it is safe to observe that the policy of the licensing authority is to ensure some competition. In the remote areas of northern Ontario the Board authorized a minimum of two road services, Star Transfer and Consolidated Freightways. As further examples, in Red Lake on Highway 105 there are four licenced carriers, in Kenora - 7, in Deep River - 3. It should be the policy of the Government and the Board to ensure effective competition.

#### 4.3 Conclusions

Public necessity and convenience is the most appropriate test by which to assess applications for entry or extended authority within the Ontario for-hire trucking industry. What constitutes a finding of public necessity and convenience will vary from case to case and will vary according to the class of licence and the nature of the proposed service. The regulatory board must be permitted enough flexibility to recognize and apply varying tests. It cannot be bound by a law which defines public necessity and convenience. It may not even be possible

to define the term to make it applicable to all the varying circumstances of fact and law with which the Board must deal.

Should the phrase "public necessity and convenience" be defined by statute? The Committee asserts the negative.

A definition appeared in an early regulatory statute in British Columbia, as well as in The Federal Transport Act of 1925. The same phrase appears in statutes governing the location of cemeteries and service stations in Ontario and in other provinces. It was found in The Motor Carrier Act of the United States in 1935 and still exists in The Interstate Commerce Act. There may be variations such as the "public interest", but rarely, if ever, does a statute attempt to limit the nature and extent of public necessity and convenience. If the administrative tribunal is genuinely interested in the welfare of the shipping public and if it is guided by a desire to achieve the greatest good for the greatest number, then the presence or absence of a definition of public necessity and convenience will not make a difference.

On the other hand, it is primarily through findings that public necessity and convenience is or is not served by a proposed or existing service that the policies of the Government are implemented by the Board. The Government must have the ability to indicate to the Board that in general, it must, in hearings regarding public necessity and convenience, consider certain facts, circumstances, trends or policies.

As argued earlier in this chapter, The Public Commercial Vehicles Act now does establish certain situations the existence of which is sufficient to question whether public necessity and convenience are being served. Those situations must by implication be criteria in findings of public necessity and convenience.

The Interim Report firmly established the Committee's major goal as ensuring that goods move freely within and without Ontario so that the public will reap the attendant benefits (page 41). It is stated on page 19 that:

It is in the public interest that Ontario has:

- (a) the ability to move goods;
- (b) the flexibility to expand, contract or shift that ability in recognition of changing market situations;
- (c) the flexibility to move goods to assist in the achievement of objectives outside the transport system;
- (d) the ability to control the movement of goods so that it will be:
  - (i) safe,
  - (ii) energy efficient,
  - (iii) equitable in its availability,
  - (iv) regular and stable, and
  - (v) affordable.

Factors a, b and c above define the interests of the regulators. The Committee suggests that through application of the test of public necessity and convenience these interests will be well served. Factors



enunciated in (d) above must constitute factors in the process of finding whether or not the test is met.

The differences of opinion on the question of setting out all the criteria of public necessity and convenience will continue. It is a healthy exercise of democracy to challenge the status quo. Nevertheless, the administration of the licensing system in Ontario has stood the test of time. "Public necessity and convenience" has been interpreted in many thousands of applications over nearly fifty years. Yet the state of the industry and the state of the province it serves are reasonably satisfactory at this time.

#### 4.4 Recommendations

The Committee recommends that:

1. The test of public necessity and convenience continue to be the test of entry and expansion within the for-hire trucking industry.
2. The Board be left free to exercise discretion and to determine in individual cases whether public necessity and convenience is served.
3. The Minister from time to time direct the Board to consider such facts, criteria, circumstances, law or policies in findings of public necessity and convenience (Subject to the recommendations in 3.3 of this Part of the Report).
4. This policy must not be used to direct the Board to particular directions in particular cases.
5. The above not inhibit the existing authority and responsibility of the Board to consider all circumstances of fact or law within its jurisdiction.

- 6.(i) Subject to the recommendations 2 and 5 above, the Minister publicly provide guidelines to the Board that, inter alia, and so as not to limit the flexibility and scope of the Board's deliberations, it should take into consideration when hearing future applications for operating authority, an extension of operating authority the following:
- (a) the provision of loads to and from places and/or on routes and the empty or partially loaded miles which could be avoided if the application is granted or rejected;
  - (b) the stability and quality of relationships between the carrier and owner drivers who work under the authority of the carrier's licence;
  - (c) the type and quality of advertising and past service by the carrier;
  - (d) the proposed tolls in relation to existing tolls;
  - (e) the record of the objector or applicant who delays recognition of claims for damages or delay in the transportation of goods;
  - (f) the recommendations or orders issued by the regulatory and/or administrative agencies in the home domicile of the applicant or carrier who is a non-resident of Ontario;
  - (g) the maintenance of an effectively competitive for-hire motor carrier industry.
  - (h) other facts or circumstances which the Board deems relevant such as operating record and payment of fines and penalties.
- 6.(ii) The Board consider such of the above factors as are relevant, and other appropriate guidelines in dealing with applications for transfer, reviews, or consultations with other regulatory Boards or Commissions.

## PART II - CHAPTER 4

### REFERENCES

1. Re Hamilton (1937) 1, D.L.R., 807.
2. Memorial Gardens vs. Colwood 1958, S.C.R. 353, at 357.
3. Per Masten, J.A., in Re Ashby 1935 O.R. 421 at 428 quoted by Ferguson, J.A., In Inglis vs. Dupont 1957 O.R. 193 at 202.
4. C.N.R. vs. Bell Telephone 1939 S.C.R., 308 at 317.
5. Re Western Ontario Credit Corp. Ltd., and Ontario Securities Comm. (1957) 9 O.R. (2d) 93 at p. 103, 59 D.L.R. (3d) 501 at p. 511 quoted with approval in Re Parent Cartage and Ontario Highway Transport Board (1976) 11 O.R. 2(d) at 700.
6. Union Gas vs. Sydenham 1957 S.C.R. 185.
7. The Ontario Highway Transport Board Report to Minister of Transport, 1966.
8. McRuer, C.J., Report on Civil Rights Report 1, Page 130.
9. " " " " " Page 217.
10. " " " " " Page 218.

## CHAPTER 5

### THE OHTB - INFORMATION & THE HEARING PROCESS

#### 5.1 General

Once policy is established and the regulatory structure is in place the procedure by which policy is administered on a case by case basis becomes critical. A board such as the Ontario Highway Transport Board which is charged with selectively dispensing sought after commercial privileges must take extra pains to demonstrate openness, to provide full information about its operations and its policies, to ensure equal and simple access to its processes and to demonstrate consistent policy oriented treatment towards those whom it regulates.

The Committee has received suggestions for improvement by the Board in these areas.

The Committee regards its recommendations in these areas as particularly important in the light of the added powers and responsibilities which the Board will assume if the Committee's recommendations are implemented. There has been no substantial formal overhauling of the Board's procedures since its creation in 1955 and it may well be that

criticism received can be explained by the inability of the present procedures to cope with a caseload which has changed and expanded greatly during the twenty-two years of the Board's operation.

## 5.2 Information and Communications

### 5.2.1 Information Pamphlet

To the Committee's knowledge neither the Ministry nor the Board publishes or distributes any information about the functions or procedures of the Board. While Board members and staff should be complimented for their efforts to respond to individual requests for information the public would be much better served if a regularly up-dated pamphlet outlining procedures and general policies could be made available for wide distribution. Applicants, respondents, witnesses, shippers and the general public must have this information. Its availability would sweep away some of the mystery which some perceive to surround the Board. Such a perception results in unnecessary expense to parties who mistakenly see no alternative to the retaining of expert counsel for very simple matters. Another incidental but important benefit would be a reduction of the pressure placed upon the time of the Chairman and members of the Board in responding to routine information inquiries.



It is noteworthy that the Interstate Commerce Commission provides such information and material to the public which, as the Committee learned on its visit to the Commission in Washington, has proved to be of great assistance to the public and to the Commission in its dealings with the public.

The responsibility of the Ministry and the Board to provide information goes beyond the narrow procedural area. The Committee feels strongly that the Board should be in a position to provide the public with information as to carriers licenced to provide service at any point in Ontario. As was stated in the Interim Report at page sixty-five, "Knowledge of existing facilities should be a by-product of regulation".

The highway transportation market must be made as understandable as possible for the consumer of transportation services and for the ultimate consumer of the goods being carried. Without full information as to the extent, nature and cost of service available the public cannot be expected to choose rationally between the alternatives provided by the regulatory system. Such information would also be invaluable in monitoring the degree of success of achieving the objectives of regulatory policy.

#### 5.2.2      A Hot Line

The Committee learned in Washington of the "consumer information program" sponsored by the Interstate Commerce

Commission aimed at certain types of consumers who need special assistance in obtaining full protection afforded by the Act, for example:

- Those who cannot be expected to follow rapid changes occurring in rate structures.
- Those who believe a service complaint is warranted but who are unfamiliar with procedural requirements.
- Those whose limited resources cannot match the presentations that may be constructed by carriers and shippers regularly participating in Commission formal proceedings. <sup>1</sup>

The toll-free consumer hotline operated by the Interstate Commerce Commission is regarded by the Committee as an attractive and readily applicable concept which the Ontario Highway Transport Board should establish immediately. The toll-free number should be advertised widely and be manned for response to public inquiries at all reasonable times. Ideally, that would mean 24 hour service. Consumers, shippers, carriers - any person or group who needs information quickly or is involved in an on the spot difficulty involving regulated transportation service should benefit from the availability of this service.

The consumer hotline will undoubtedly prove to be particularly useful in dealing with consumer complaints in the household goods movement field.

### 5.2.3 Decisions of the Board

A key element in the information which the public has the right to expect from its Board is publication of Board decisions,

particularly any which establish policy or guidelines. Without this information even the most sophisticated shipper, carrier or lawyer will have great difficulty carrying out long term management planning or providing expert advice in matters affected by Board decision making.

A carefully reasoned case supporting this basic information requirement is made by Professor H.M. Janisch in his introduction to Publication of Administrative Board Decisions in Canada which is reproduced in Appendix K - 1.

The Board should immediately undertake or commission the publication of an indexed and cross-referenced collection of all of its Decisions to ensure that its past policy and adjudicative guidelines are exposed to those who want or need to know subject to the caveat that the Board has not felt bound by its own decisions.

### 5.3 Scheduling and Notice of Board Proceedings

The administrative time lag in the Ontario Highway Transport Board system is minimal in comparison to that encountered in other jurisdictions. However, a number of complaints received by the Committee regarding scheduling indicated a lack of understanding of or with the process. It is to be hoped that the reasons for the concerns expressed can be totally eliminated by implementation of the notice and hearing procedure proposals which follow.

The Committee recommends continuation of the present requirement of publication of every proceeding involving permanent authority in the Ontario Gazette. It is noted by the Committee that at least one trade association publication reprints the Board's Gazette publications and this wider dissemination undoubtedly is a useful service to the association members.

The Board should be encouraged to undertake supplementary advertising in appropriate cases where issues before it deserve to be brought more forcefully to the attention of particular groups or the general public. Advertising in local newspapers in such cases (and especially for out-of-town hearings) would have the welcomed effect of raising public awareness of the important regulatory function which the Board performs.

The Committee recommends that every effort be made to accommodate requests for hearings outside Toronto. The Board's information literature should make the out-of-town option known and its application forms should contain a section requesting the Applicant's choice of location.

Groups of applications before the Board raising identical issues and based upon similar evidence are not uncommon. Commercial zone applications are good example. Special procedures should be adopted to avoid duplication and repetition of issues and evidence in such cases.

#### 5.4 Modified Procedure

The Committee does not regard the modified procedure system followed by the Interstate Commerce Commission to be appropriate for wholesale adoption by the Ontario Highway Transport Board.

The Committee however was impressed with the recurring comments by virtually all categories of persons who testified or submitted briefs to the effect that the Board relies too heavily on oral hearings in cases where the information required for decision making can be gathered in a much more efficient and cheaper manner without in any way sacrificing the basic requirements of fairness.

There is already machinery (Section 8 of The Ontario Highway Transport Board Act and Section 8 of Regulation 632) under which the Board may deal with unopposed applications without a public hearing. The Committee takes the view that with insistence upon fuller disclosure by applicants at the filing stage and an adequate staff investigation no unopposed application need be scheduled for a public hearing. There appears to be no reason why such applications cannot be assessed and granted, modified or dismissed on the basis of material filed. In this respect the Committee's goal is to simplify, shorten and make less costly unopposed applications to the Board.

There are a number of causes for the relatively high cost of opposed proceedings about which the Committee received testimony:



- (i) uncertainty and unpredictability of Board policy;
- (ii) over-reliance on costly counsel in minor matters;
- (iii) reliance on quantity rather than quality of evidence presented by parties to the Board;
- (iv) lack of prehearing disclosure of evidence.

While oral adversary proceedings on balance appear to be the most appropriate information gathering method on which to base complicated Board decision making, the Committee is satisfied that the Board should experiment with no-hearing procedure in contested cases where all parties consent.

While the Committee feels strongly that the Board is in the best position to decide whether a particular issue requires a public hearing the interests of cost reduction and time saving dictate that every effort be made by the Board to reduce unnecessary reliance on hearings where the rights of the parties will not be prejudiced.

The Committee has concluded that the Board should have available qualified staff to provide general advice and information to prospective parties who may require it. The chief objective would be to accomplish a pre-publication screening of obviously unrealistic applications or objections. The Committee heard throughout its hearings of applications submitted to the Board which were unreasonably broad in the context of need and available support. It appears that there may be a tendency amongst applicants to request far more authority than they need or for which they have support in the general, unjustified hope that potential respondents and the Board may inadvertently not catch it. To eliminate this practice the Board should require each applicant to provide the

Board with a list of supporting witnesses and their consents to support with adequate assurance that objecting carriers will not tamper with such witnesses.

A complete revamping of the Board's application forms should also be undertaken aimed at early disclosure of as much information as possible regarding the applicant and the nature of the application (See Appendix L for I.C.C. Application Form).

New applicants, without operating and financial experience, may tend to seek authority in terms that cannot be economically managed during the start-up period. While it should be made clear that no one ought to be denied access to the Board's processes no matter how unreasonable an application or objection may appear to be, there seems great merit in attempting to achieve by counselling and consent what would otherwise result in unnecessary expenditure of the Board's time and the applicant's money.

In this vein the Interstate Commerce Commission advises prospective applicants:

...be sure there is a real demand for the type of service you propose. Check the operations and rates of carriers (if any) presently performing the service. Make sure...that you will be able to make a profit. Make your proposal reasonable. Don't seek authority to transport all kinds of goods when there is only a need for service for one or two commodities since you will be expected fully to perform whatever operations are ultimately authorized. <sup>2</sup>

Providing assistance to prospective applicants and respondents in weighing and applying the advice of the Interstate Commerce Commission quoted above provides a reasonably complete job description for the staff "examiner" system the Committee recommends the Board adopt.

All applications filed with the Board should be published within 16 days of filing in the Ontario Gazette and elsewhere as appropriate. No hearing date should be established at this stage. A reasonable period should then be allowed for filing of opposition and interventions. If no oppositions or interventions are filed within the prescribed period the Board should dispose of the application as quickly as possible without an oral hearing.

If the application is opposed it should proceed to a regular public hearing unless all parties consent to it being dealt with on the basis of written material. Since at this stage all interested parties will have been identified the Board can establish a convenient date and location for the hearing in consultation with the parties without the need of further publication.

Also at this stage the Board should encourage the parties to narrow the issues in dispute through negotiation, under the auspices of the Board's examiner if requested. If negotiations result in withdrawal of opposition the matter should revert to the no-hearing procedure.

## 5.5 Appeals

The Ontario Highway Transport Board Act presently provides:

- (i) an appeal to the Supreme Court of Ontario by way of stated case upon any question of law;

- (ii) an appeal to the Supreme Court of Ontario upon any question of jurisdiction or law;
- (iii) a petition to the Lieutenant Governor in Council for confirmation, variance or recession of any Board Order or decision.

In addition The Judicial Review Act provides for judicial review by the Divisional Court on matters of law and jurisdiction.

The above forms of appeal are resorted to relatively infrequently in relation to the number of cases dealt with by the Board. As discussed in Chapter 4, the Courts generally regard themselves as without power to interfere in the Board's decision making provided there is no excess of jurisdiction or clear error of law. Petitions to the Lieutenant Governor in Council have normally occurred only when matters of transportation policy are in issue and have rarely resulted in reversal of Board decisions.

While the above appeal procedures provide very necessary protection there appears to be much more demand for an administrative appeal procedure within the Board allowing for relatively quick and inexpensive reconsideration of matters of fact, policy or law. Resort to such administrative appeal should of course not prejudice the right of a party to subsequently take advantage of the statutory appeals described above.

The Committee has noted the new and sophisticated appeal processes which have been established for other agencies, boards and commissions in the Ontario Government subsequent to the McRuer Report. In some



cases, special appeal tribunals have been set up to hear appeals from decisions originally made by another agency. For example, decisions of the Liquor Licence Board may be appealed to the Liquor Licence Appeal Board. The Committee is aware of the Licence Suspension Appeal Board established under The Highway Traffic Act which conducts hearings and may hear appeals from decisions of the Registrar in cases of driver licence suspensions and plate/permit cancellations or the Director as specified in Section 58 in certain cases involving licensed inspection stations.

A separate appeal tribunal appears to have certain advantages in a general context, but the Committee is not certain that it is necessary in the specific context of The Ontario Highway Transport Board decisions. Whether a separate tribunal could be an effective and efficient mechanism in this instance is open to debate. The Committee therefore, has examined what it believes to be a more viable alternative.

In so doing, the Committee examined the practice which has developed in regard to administrative appeals within the Board pursuant to Section 17 of The Ontario Highway Transport Board Act.

The weakness of the system is its limitation either to:

- (i) a complete rehearing requiring the recall of all witnesses for examination and cross-examination; or
- (ii) a rehearing restricted to additional argument only before the panel whose decision is appealed



The first alternative is not an appeal but a fresh application totally unconnected with the proceeding "appealed" from. It forces all parties to repeat the full delay and expense of the initial hearing. Except in very unusual circumstances the Committee believes applicants should be prevented from reapplying until the expiry of a mandatory waiting period. The six month waiting period prescribed by the Quebec Transport Commission seems reasonable.

The second alternative forces the aggrieved party to bring his appeal (in fact a reargument) before the same panel of the Board with whose decision he is dissatisfied. Such a procedure may be useful in rectifying minor or inadvertent errors or inconsistencies but it cannot be said to provide the independent objective reappraisal expected in an appeal.

An administrative appeal combining the objectivity and independence of the first alternative with the speed and low cost of the second would satisfy legitimate demands of aggrieved parties and promote consistency in Board decisions.

The proposed appeal should be to a minimum two member panel consisting of at least one of the Chairman or a Vice-Chairman neither of whom should have participated in the initial hearing. It would hear appeals on questions of policy or law and on questions of fact where a finding of fact fundamental to the decision appealed from is totally without support from the evidence.

The appeal panel should have the latitude to proceed on the original transcript, a statement of agreed facts or, in exceptional cases, additional evidence.

To avoid frivolous appeals the appellant should be required to obtain leave before proceeding.

Since a speedy decision is imperative the appeal procedure should not be delayed by a requirement of publication in advance. Service of appeal documents on all parties of record together with a hearing date set by the Board in consultation with the parties will guarantee adequate notice.

#### 5.6 Non-Permanent Operating Authorities

The Board has responded to obvious public need by developing a system under which three types of non-permanent operating authorities can be obtained.

- (i) emergency authority normally applied for and granted by telex to ensure a written record. Such authorities are invariably of short duration and are granted in urgent situations and are frequently issued by single trips;
- (ii) temporary authority applied for on the standard Board application form and normally accompanied by affidavit evidence from the shipper(s) requiring the service. Normally granted for a fixed period to meet a non-recurring need.
- (iii) interim authority applied for on the standard Board form and accompanied by affidavit evidence from supporting shipper(s). Normally granted to expire upon disposition of the permanent application required to be filed simultaneously.

The Ontario Highway Transport Board Act and regulations thereto should be amended to formalize and improve upon the ad hoc system which has grown up.

Two types of non-permanent authority should be available:

- (a) Emergency authority granted without notice in the discretion of the Board for a period not to exceed seven days and may involve only a single movement. Sworn evidence should not be a prerequisite. The authority should be non-renewable.

Every emergency authority should be publicly posted by the Board at its offices on the date it is effective.

- (b) Interim authority granted for expiry on a fixed date or automatically on disposition of a related permanent application, if any. It may be preceded by the granting of an emergency authority. Notice of the application should be given to potentially affected licence-holders and posted publicly at the Board's offices prior to its consideration at a regular weekly sitting of the Board, presided over by the Chairman or a Vice-Chairman, to deal with interim applications on an expedited basis.

The Board should encourage informality and not insist on normal evidentiary standards at these weekly sittings. Interim authority should be granted only if the Board is satisfied that an immediate need exists.

Once granted the interim authority should not be cancelled or revoked before its normal expiry except upon evidence, at a subsequent weekly interim application hearing, of substantial harm to an existing carrier prepared to provide the required service of of violations of law by the interim licensee.

## 5.7 Representation Before the Board

Evidence before the Committee indicated that most opposed cases and many unopposed cases before the Board involved parties on

one or both sides represented by expert legal counsel. It is clear to the Committee that legal representation is an aid and often a necessity in complicated and controversial cases. It is also expensive and alternatives should be provided for those who require them.

The information program described elsewhere should assist in demonstrating that self-representation preceded by the assistance of Board staff is one such alternative particularly in unopposed or simple opposed matters.

The Committee was impressed with the additional alternatives available to parties to proceedings before the Interstate Commerce Commission where,

Non attorneys may be admitted to practice before the Interstate Commerce Commission through a certification procedure which requires evidence of appropriate education, experience and knowledge of the field of transportation regulation, plus successful completion of a comprehensive examination conducted by the Interstate Commerce Commission. All who practice before the Interstate Commerce Commission must agree to abide by a strict code of ethics. Violations can result in disbarment. <sup>3</sup>

There are currently five to six thousand Class B practitioners qualified to practice before the Commission. Some thirty-five to forty of these are on the staff of the Interstate Commerce Commission. <sup>4</sup>

The Committee supports this "third choice" concept and feels that a similar program would be of benefit to Ontario. Practice in the field of transportation regulation requires special expertise. It is to the advantage of those who wish to apply for operating authority to have this expertise broadbased and available readily and at an affordable



price in all parts of Ontario. Since most matters which the Board considers are oriented primarily to fact and policy rather than law there seems no reason why properly trained non-lawyer practitioners could not play as useful a role here as before the Interstate Commerce Commission.

The Committee recommends that immediate consideration be given to the establishment of a post secondary school program to train practitioners qualified to advise and represent parties to Ontario Highway Transport Board proceedings with respect to non-legal transport regulation matters.

#### 5.8 OHTB Rules Advisory Committee

Since its creation in 1955 the Board has been without power to amend its basic procedures to keep pace with the demands placed upon it. Requests for various procedural changes contained in its Annual Reports to the Minister have unaccountably not been implemented.

The Committee recognizes the need for Board procedures to be flexible and responsive to changing demands. To monitor properly the effectiveness of procedures on an ongoing basis the Committee recommends the establishment of an Ontario Highway Transport Board Rules Advisory Committee composed of the Chairman and Vice-Chairmen of the Board, two representatives of the Bar and one representative designated by the Attorney-General. This Committee should meet regularly to review



and improve internal procedures and, where necessary, to recommend procedural amendments to the legislation and regulations for consideration and action by the Minister.

#### 5.9 Recommendations.

The Committee recommends that:

1. That the Board consider the publication of pamphlets and other appropriate literature to describe to the public and to shippers and to applicants, the law and processes which surround the operation of the Board and its decision making process.
2. First priority should be given to a publication of carriers and capacity by location served.
3. The Board establish a toll-free hot line to augment its other information services and the number be highlighted in regular publications of the Board and the Ministry.
4. High priority be given to disseminating information regarding household goods movements.
5. The Ministry of Transportation and Communications and the Ontario Highway Transport Board examine together the feasibility of automating the issuance of Public Commercial Vehicle (and Public Vehicle ) licences and storage of licensing records. An effective automated system would assist the administration of the law and policies and make it more efficient. It would facilitate policy evaluation and the dissemination and interpretation of facts, figures and information for the public and the industry.
6. The Ministry of Transportation and Communications and the Ontario Highway Transport Board examine together the feasibility and potential of automating appropriate portions of the "rate filing system".

7. The Board publish an indexed collection of its written Reasons for Decision on a continuing basis.
8. The Board experiment with a broader advertising program for proceedings of general public importance.
9. The Board take steps to continue and expand its program of out-of-town hearings and make the public aware of the option in its information pamphlet and applications forms.
10. Unopposed applications to the Board be disposed of without a public hearing. To facilitate early disposition the Board should cause all applications to be published within 16 days of filing with an appropriate time period thereafter for oppositions and interventions by all parties. Opposed applications should be scheduled for hearing in consultation with all parties.
11. Contested cases before the Board also be handled without a hearing if all parties consent.
12. The Board appoint one or more examiners who would under the direction of a member of the Board,
  - (i) deal with individual requests for information not requiring the attention of a Board member,
  - (ii) interview and counsel prospective applicants on request prior to filing, and
  - (iii) assist both applicants and opposing parties to narrow issues prior to a public hearing.
13. The Board's application forms be revised to require much more information. The Interstate Commerce Commission application form provides one useful model.
14. Applicants be required to disclose to the Board support at the time of filing and if the Board is of the opinion that the applicant and his witnesses will not be prejudiced, the Board may make particulars of the application in full or in part, public.
15. After a modified proceeding, the entire application will be a public document.
16. Frivolous oppositions be discouraged and an appropriate awarding of costs be made by the Board. Every objection filed must be accompanied by a filing fee.

17. An administrative appeal be established within the Board, where the appeal panel includes at least one of the Chairman or a Vice-Chairman. The appeal be restricted to questions of policy or law and errors of fact fundamental to the decision appealed from but totally without support from the evidence. The appeal panel consider the transcript, agreed facts or, in exceptional cases, additional evidence.

18. Two types of non-permanent authority be available:

- (i) Emergency authority: granted without notice in the discretion of the Board for a period not to exceed seven days and may involve only a single movement. Sworn evidence should not be a prerequisite. The authority should be non-renewable.

Every emergency authority should be publicly posted by the Board at its offices on the date it is effective.

- (ii) Interim authority: granted for expiry on a fixed date or automatically on disposition of a related permanent application, if any. It may be preceded by the granting of an emergency authority. Notice of the application should be posted publicly at the Board's offices prior to its consideration at a regular weekly sitting of the Board, presided over by the Chairman or a Vice - Chairman, to deal with interim applications on an expedited basis.

The Board should encourage informality and not insist on normal evidentiary standards at these weekly sittings. Interim authority should be granted only if the Board is satisfied that an immediate need exists.

Once granted the interim authority should not be cancelled or revoked before its normal expiry except upon evidence, at a subsequent weekly interim application hearing, of substantial harm to an existing carrier prepared to provide the required service or violations of the law by the interim licensee.

19. The Ministry of Transportation and Communications, along with the Ontario Highway Transport Board and the Law Society of Upper Canada, in conjunction with the Ministry of Colleges and Universities, other interested governmental and non-governmental agencies and groups consider the establishment

of a program at the Community College level offering a practitioner's diploma which would enable graduates not authorized under The Law Society Act to practice for compensation before the Ontario Highway Transport Board.

20. The group established meet and report to government with its findings as to feasibility and costs of such a program within six months of this Report.
21. These recommendations be considered and implemented in conjunction with the Committee's other recommendations regarding education.
22. The Minister of Transportation and Communications appoint the Chairman and a Vice-Chairman of the Board, two members of the Bar and one person designated by the Attorney-General to a Rules Advisory Committee. The Committee would review and recommend improvements to The Ontario Highway Transport Board procedures on a regular basis.
23. Members of the Board not appear as a solicitor for or as an agent on behalf of private parties in any proceeding before the Board for a period of not less than six months after severance (by retirement or for any other reason) from the Board.
24. All parties filing documents at the Board pay filing fees in amounts to be determined by the Board. This should include not only the filing of objections by respondents to applications but also filings by intervenors in review proceedings.
25. Gazette publication of notices of appeal be confined to an abbreviated reference to the proceedings without setting out the detailed grounds alleged by the affected party.
26. A register be kept at the reception desk at the premises of the Board in which will be recorded the names of all persons (and their principals) attending on members of the Board.
27. All copies of documents in the custody of the Board or particulars of any certificate, order or licence issued by the Board be subject to a fee which will approximate the cost of the service rendered.



28. The Board assess costs against the parties concerned in proceedings which,
  - (a) extend beyond one business day,
  - (b) require the attendance of Board officers outside its chambers, or
  - (c) involve the preparation of a transcript.
29. The Board require all licensees to respond to complaints within 30 days.
30. The Government consider the potential benefits of the Board engaging part time or temporary members.
31. The Board should accept recommendations from the Rules Advisory Committee as to a Board power to appoint counsel to act for or on behalf of any party in a proceeding and the removal of counsel for cause.
32. The Board be given statutory power to convene meetings with other boards, commissions or agencies of Government, at its premises in Toronto or elsewhere within or without Ontario and conduct public hearings together with the members or staff of other tribunals or departments of Government as directed by the Minister and the Board may conduct proceedings, issue orders and render decisions as if the matters considered at joint hearings had been conducted exclusively by the Board in Ontario under The Ontario Highway Transport Board Act, The Public Commercial Vehicles Act or The Motor Vehicle Transport Act.
33. The Chairman of the Board together with one or more Vice-Chairman may exercise whatever measures are required for the reasonable discipline of the other members of the Board and may, for cause, suspend such members.
34. The Chairman of the Board or other members of the Board or staff deputized by him for the purpose may prepare lists of and dates for hearings, itineraries for other members, may order other members to produce written decisions within a reasonable time following the conclusion of a hearing or other proceeding.
35. In the event of a difference of opinion amongst members of the Board, the Chairman may reopen the proceedings for further consideration by the original panel together with such other members as may be assigned thereto.



PART II - CHAPTER 5

REFERENCES

1. Interstate Commerce Commission; Annual Report, 1975, Page 96.
2. Interstate Commerce Commission; Entering the Trucking Business, Some Questions and Answers, undated, Page 5.
3. Interstate Commerce Commission, Consumer Information; undated, Page 10.
4. Interviews with the Interstate Commerce Commission, in Washington, September 8, 1976.

## CHAPTER 6

### RESPONSIBILITIES AND FUNCTIONS OF THE BOARD

#### 6.1 General

If the relevant statutes are to be amended as recommended in this Report, the Minister's authority would be clarified vis à vis the Board. As well, the Board's major goals and responsibilities would be publicly established. The Committee believes that the current system is not as conducive as it should be to the attainment of an efficient and viable truck transportation system which provides service to all parts and shippers of Ontario where it is needed at the lowest possible cost .

If the Board is to achieve this goal, it must control the entire for-hire industry to the limits of its authority unless the policy of the government and law clearly exclude a segment. It is not sufficient that it control only a segment, with significant amounts of freight being carried outside the regulated industry. If this were the case, the Board's effect on the overall capability would become negligible and the reasons to control entry and to impose certain operational controls would be unjustifiable. Either the suppliers of for-hire truck transportation services are controlled or they are not. As clearly stated in the Interim Report, it is prudent to retain economic regulatory control over the industry.

As stated earlier, the ultimate responsibility for the achievement of appropriate transportation goals lies with the Minister. Further a regulatory agency, separate from the "Ministry" is the most appropriate organizational mechanism to administer relevant law and policy. On a day to day basis, it affords independence and separation from political interference; it provides flexibility in management and in the exercise of its mandate; it allows the formation of a group which is specialized and knowledgeable in its field.

Given a subscription to the concepts of overall ministerial responsibility, benefits of a regulatory agency, and the need for effective control over the entire industry, then as the Minister's ability to control in the overall must be defined and expanded, the Board's ability to control in the day to day arena must also be defined and expanded.

The Board's formal mandate has been as a regulatory commission only. In practice, the Board's activities are far broader. It is really a mix of regulator, licensor, negotiator, judge and it provides a forum which is conducive to professional self regulation and in which marketing decisions are made. The Board's effectiveness arises from its abilities in all these areas. It must have latitude to move, and it must have the authority and ability to approach a problem within the industry in a way that it will resolve the problem to the benefit of the public.

## 6.2 Licensing Process

An anomaly exists in that the Minister issues licences but the Board must first "approve" the issuance. The Board's mandate in practice, with regard to applications before it, is to issue (or not issue) a certificate of necessity and convenience to the Minister who "may" issue a licence. The Minister, in issuing a licence, directs the Ministry to collect a fee for and issue a Public Commercial Vehicle plate assuring itself first that the holder of the plate is the holder of a Public Commercial Vehicle licence and is the registered owner of the vehicle to be licensed. Furthermore, the Minister requires that suitable insurance and Workmen's Compensation requirements be met.

Licences once issued reside in the Ministry. Copies are sent to the Board.

Licences issued by the Minister reflect all the terms and conditions set out by the Board in its certificate.

The Ministry maintains a staff of thirty-nine in its Highway Carrier Licensing Office to issue both operating and vehicle licences after receiving a certificate from the Board. The office also issues trip permits for the movement of freight in bond through Ontario and is responsible for the filing of public vehicle (bus) timetables and tariffs of tolls. All public vehicle tolls are published in the Ontario Gazette. It is interesting to note that it is the Board which administers the filing of public commercial vehicle (truck) tariffs.

Although no formal records exist, since the first involvement of

the Ontario Municipal Board and continuing through the Ontario Highway Transport Board's history, the Minister has had cause to refuse to issue a Public Commercial Vehicle licence in accordance with a Board certificate on relatively few occasions. The Minister may refuse because of (1) a disagreement with the finding of the Board (e.g.'s Smith Transport Ltd., Toronto to Sarnia, April 1952 and Trans-American Freight Lines Inc., Detroit to Toronto, December 1964); (2) the failure of the applicant to meet the standards of insurance, Workmen's Compensation or other regulations. This may occur, on average, ten to twenty times a year.

The Committee recommended in the Interim Report (page 58) that the Board be empowered to issue cease and desist orders to prohibit an offending carrier from further illegal operations.

In doing so, the Committee recognized several potential problems, including the fact of questionable authority of a Board to "undo" by order, what a Minister has authorized, appeals and licensee rights aside.

The Committee continues to hold that this recommendation is appropriate.

The recommendations on licensing are based on the facts that there now exists a redundancy between the Board and the Ministry, that for effective control the Minister need not issue licences (and cannot without the Board in current law), that for effective control the Board should have the authority to issue cease and desist orders and that it cannot take away what it is not empowered to grant, and the general belief that more administrative control is in the public interest.



### 6.3 Research

The Board "should be equipped for research on matters pertaining to private as well as for-hire transportation". (Interim Report page 61)

There are dangers inherent in this policy.

The potential problems may be obvious to some, but they are important enough to discuss. This is particularly important if the Minister is to be responsible for overall Board policy formulation.

Two things must be avoided in increasing the expertise of the Board:

1) the creation of a facility at the Board which duplicates that found in the Ministry and 2) any tendency of the Board to expand this capability until it is all powerful .

The Economics Policy Office, the Research Division and the Program Development Branch of the Ministry of Transportation and Communications should be coordinating long term planning regarding goods movements, for and as input to the Minister. These organizations have an enviable pool of talent and are developing a significant expertise in matters relating to the trucking industry. Their work should and must continue as there are significant questions which must be addressed over the next several years. Analysis of these questions will lead to the formulation, one hopes, of reasoned, proven and structural policies for government activity regarding supply and demand for transportation services. Energy, long range safety research, the quantification of the economic and social effects of particular regulatory programs on the industry, the assessment of policies, the negotiation of reciprocity agreements - these are but a few of the major issues which must be faced by Ministry personnel.

Long term, sophisticated, socio-economic, political planning and assessment is one thing, requiring a particular expertise. Short run collection and analysis of figures and facts is yet another.

If the Board is to continue to make objective, reasoned decisions which directly affect entry and performance within this critical industry, then it must be provided with appropriate technical expertise. As the number of operators has increased, so have the number of vehicles and the number of shippers. The industry is becoming larger and more complex every day. The needs of the buyers of transportation are constantly changing and become more sophisticated all the time. Tariffs proliferate; they are virtually impossible for the layman to understand. The way in which transportation will be supplied to meet constantly changing and growing demand will continue to become more difficult to comprehend and to oversee.

As the market for transportation becomes larger, more complex and more sophisticated, so do the cases of those who appear before the Board during the hearing process. Highly technical submissions must be assessed. Empirical data brought before the Board must be determined to be correct if it is to be considered.

The Government can not expect the Ontario Highway Transport Board to make objective decisions without highly qualified professional staff.

There is more than one way to provide this analytical expertise to the Board:

1. The Board could request analysis from the Ministry as required.
2. A ministry having analyzed existing information pertinent to the case could appear before the Board as a witness either (a) all the time, (b) at the Minister's direction, (c) at the Board's request.
3. The Board could be given additional staff to analyze the data collected during the exercise of its mandate in order to determine and keep totally informed on industry trends.

The Committee favours the adoption of option three in conjunction with 2c.

It is important to recall the different types of research required.

Long run, total system planning including examination of subjects which require particular technical expertise (eg. energy) and short run, day to day analysis of the facts and data filed with the Board in the performance of its duties. While these undertakings serve different purposes, they are inextricably linked. It is vital to understand today's market so that long run planning will be properly based.

Consistent with being autonomous in day to day decisions and administration, the Board should have further expertise. This is appropriate in light of the recommendation in the Interim Report that "annual filings of financial statements be required", (page 68) and the recommendation in this report that the functions (and therefore the data producing capabilities) of the Highway Carrier Office be transferred to the Board. These actions will provide new, close at hand data sources for the Board and the Government. These data must be put to good use and can be only if the Board has the proper expertise.

The Ministry should be called as a witness before the Board in cases where it is required. The statutory authority for the Board to do this now exists but is seldom used. The Minister must control long range policies and The Ontario Highway Transport Board Act would as amended provide him with authority to direct the Board to consider certain facts in its deliberations. The appearance of the Ministry before the Board would permit formal input on technical matters in which the Ministry may have particular expertise and competence.

#### 6.4 Recommendations

The Committee recommends that:

1. The Ontario Highway Transport Board retain the services of appropriately qualified professionals to undertake analysis of statistical, financial, tariff and other information which flows to the Board in the course of its duties and which must be analyzed to make decisions on matters before the Board.
2. The Board, in so doing, not duplicate the expertise now resident in the Ministry.
3. The Ministry , through its appropriate offices, continue to conduct studies of the trucking industry and the overall freight transportation system with a view particularly towards planning for legislation, government's role, policy formulation and evaluation.
4. The Ministry and the Board establish formal working level contacts to exchange information and to coordinate respective efforts in areas of mutual interest.
5. The Minister establish and maintain a forum for regular joint discussions with the Chairman and other members of the Ontario Highway Transport Board to discuss, establish and assess policies and practices of the Board.

6. The Board request Ministry staff to appear on any matter that requires the Board to be informed of any particular policy, fact, circumstance or law on which the Ministry has expert knowledge.
7. The appropriate Acts be amended to empower the Board to issue licences under The Public Commercial Vehicles Act.
8. The Public Commercial Vehicles Act be amended to require the Board to furnish the Minister with a copy of the licence in any case one is issued or amended or a report in any case it is so requested by the Minister or in any case a cease and desist order is issued.
9. The responsibilities of the Highway Carrier Office regarding administration of The Public Commercial Vehicles Act and sufficient staff be assigned to the Board.
10. The Ministry consider assigning the functions related to The Public Vehicles Act from the Highway Carrier Office to the Board.
11. The Board as a matter of policy consider the retention of auditors, statisticians, economists, journalists, members of the bar or tariff experts, etc. when necessary to facilitate its processes.



## CHAPTER 7

### ENFORCEMENT

#### 7.1 Introduction and Background to the Current Record

It is important to examine carefully the meaning of enforcement. It is often used in the context of "enforcing the law". "Enforce" has been defined to mean "urge, press home (an argument or demand); impose (an action or conduct upon a person); compel observance of (the law)". "Observe" has been defined as "keep, follow, adhere to, perform duly".

The understanding most people have is that enforcement involves necessarily the laying of charges for suspected violations of the law. Charges are laid so that the offender, if proven guilty in a court of law may be punished (to inflict penalty for). The process of charging (to accuse or to impute a person with action or fault) in strict terms can be thought of as enforcement only to the extent that it compels future observance of the law.

It is necessary to broaden the concept of enforcement to its true meaning. The process of laying charges is only one way to enforce the law, and in most cases, it is not enforcement at all. It is more often a step in a process of punishment. There are many methods by which actions or conduct can be imposed, by which the wisdom of an argument can be urged and by which a person can be constrained, forced or brought to observe the law.

Laws are enforced on all citizens not only by the police with the ability to lay charges and the courts with the authority to decide guilt. They are enforced in the absence of any offence through government advertisement, education and safety programs. Laws are enforced in part by encouragement and the provision of incentives not to commit the offence.

The discussion in this chapter examines the need for enforcement in its broadest terms. In doing so, the Committee does not wish to set aside that part of the enforcement and punishment processes which involve the laying of charges and the hearing of cases of alleged violations of the law within the courts.

We are giving further study to the role of the Board in enforcement. (Interim Report page 61)

The Chairman of the Board in his testimony commented:

The Board exercises a review function in order to ensure that the licensed carriers not only comply to the various public enactments, but also afford the public a degree of service which is essential and necessary...the Board becomes the sounding board...the powers of investigation, however, are not under our control. Whereas we do not seek to replace the enforcement branch of the Ministry of Transportation and Communications, nevertheless our ability to discharge our responsibilities is tempered by the lack of investigative personnel. That support staff would be used to investigate public complaints against licensed carriers; to assess the impact on the public of changing rates; and to monitor the financial viability of the carriers under our control...we are presently without power to issue orders compelling compliance with our findings...assisting the regulatory process is our day to day concern...

The Committee commented in general terms in the Interim Report on enforcement. The Committee was, and remains of the opinion, that on-highway enforcement is not sufficient by itself despite the fact that the Ministry has established 48 truck inspection stations across the

province and spends well over two million dollars per year on enforcement.

These stations and the related activities of uniformed enforcement officers in patrol cars are useful in very many ways. It is vital that these operations be continued if weight and vehicle standards are to be enforced. While it is also important that they continue as part of the effort to enforce The Public Commercial Vehicles Act provisions, it is clear that on-highway activity is simply not sufficient to adequately enforce public commercial vehicle law.

The Committee heard two diametrically opposed views during its hearings regarding Ministry of Transportation and Communications' efforts to enforce existing laws.

The Ontario Trucking Association commented:

The present judicial process is ponderous, time-consuming, ineffective and in the case of the holder of a Public Commercial Vehicle operating authority, unduly onerous because of a double jeopardy to which they are subject...<sup>2</sup>

Despite the very serious endeavors of the Ministry to enforce the provisions of The Public Commercial Vehicles Act, it has been unable to effectively stop the activities of those people<sub>3</sub> carrying goods for hire in contravention of the Act...

On the other hand, oral testimony was given by a number of carriers who suggested that the Ministry's enforcement activities were very strong and that they were being "persecuted" and forced out of business.<sup>4</sup>

Another group indicated that the overall process was ineffective - some licensed carriers continued to operate with what some considered to be operating records which "leave much to be desired".<sup>5</sup>

That same group, which might have been expected to criticize the Ministry's activities as being overly aggressive towards some of its members, stated in reference to the present system "in order to achieve substantial compliance with such a system, a small army of government employees would be required".<sup>6</sup>

No enforcement activity can be totally effective.

Similar problems are occurring with regard to the enforcement of air regulations where the jurisdiction of regulation is also split between two bodies, the Canadian Transport Commission and Transport Canada.

## 7.2 The Current Record

The Ministry of Transportation and Communications currently employs approximately 180 officers; 48 truck inspection stations; 65 patrol vehicles; 12 portable scales; and has an annual budget of more than two million dollars for enforcement. This expenditure is made in respect of the enforcement of the law relating to all commercial vehicles of which a small percentage are public commercial vehicles.

The Ministry reported to the Committee on these activities as follows:

The major controlling factors governing station operating hours generally speaking are:

- (a) Amount of industry generating truck traffic
- (b) Peak commercial traffic periods
- (c) Proximity to border crossings, and extent of customs processing facilities, and
- (d) Location of stations on major travel routes between high population areas.



The main factors determining that stations are closed at certain times are:

- (a) shortage of manpower to enable a complete two or three shift operation and shortage also due to court commitments, vacations, sickness or other assigned duties, and
- (b) statutory holidays, weekends and summer holiday periods, June through August of each year when highway congestion is greatest because of tourist traffic.

The hours of operation at stations are varied to prevent the commercial motor vehicle operators becoming familiar with the hours of operation beforehand, which would enable them to by-pass or otherwise avoid entering for inspection.

Salaries and wages account for the major proportion of the costs involved in an inspection station operation. In relation to the personnel required, salaries and wages rounded out would break down as follows, for a one 7½ hour shift operation:

(1)	One man station - yearly	-	\$14,000
(2)	Two man station - yearly	-	\$26,000
(3)	Three man station - yearly	-	\$39,000
(4)	Four man station - yearly	-	\$51,000

It then follows that an attempt to provide two or three shift operations would double or triple respectively the salaries and wages bill.

The total 1976-1977 budget for enforcement activities is \$2,822,000 of which \$2,391,000 is for salaries and wages alone. Salaries and wages are presently under review and are expected to increase. Additional costs are involved in station maintenance, heating, lighting and other similar services; but these are really insignificant when compared to the total budget.

A total complement of 179 officers are responsible for the enforcement activities within the province, and an officer may be assigned to mobile units, portable or permanent stations at any given time. This enables the limited staff to be utilized in the most effective way.



The cost associated with a program at this time to operate stations for longer periods would mostly be for salaries and wages. An attempt to add an extra shift at ten of the higher volume, four-man operated stations, would require the recruitment of another 40 officers at an estimated minimum cost of \$450,000 per year for salaries, wages, uniforms, equipment and training. This would increase as the officers proceeded through the classification system. Furthermore, support staff such as the Investigation and Prosecutions Office, clerical and general office administration would need to be enlarged to deal with the extra work generated by longer hours of operations.

There are some 1,000 prosecutions for Public Commercial Vehicles Act, Motor Vehicle Transport Act and Highway Traffic Act offences now outstanding. (Interim Report, page 34)

In the calendar year 1975 the Ministry caused to be issued 11,521 summonses for alleged offences under the noted Acts plus The Public Vehicles Act. In the same time frame, 10,483 proceeded to conviction, yielding fines of \$572,963.05 and court costs of \$19,936.12.

With respect only to public commercial vehicle operating authority offences, the Ministry laid 770 charges for no operating licence (639 convictions) and 472 for operating contrary to operating licence (293 convictions). These convictions led to the imposition of \$64,509 in fines - an average of \$72.00 for no operating authority and of \$64.00 for contrary to authority .<sup>8</sup>

### 7.3 Fundamental Problems in Enforcement

#### 7.3.1 The Public Commercial Vehicles Act and The Highway Traffic Act

Currently, the Board has no enforcement authority. It can enforce through "persuasion". The Public Commercial Vehicles Act is enforced under the following provisions, extracted from The Act:

15(b)(2) a member of the Ontario Provincial Police Force or an officer of the Ministry may at any time examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act and the Regulations are being complied with...

15(c)(1) an officer of the Ministry may at any reasonable time examine all books, records and documents of the holder of an operating licence relating to the business of operating public commercial vehicles...(and he may) enter...the business premises of the holder.

15(c)(2)..the Minister may appoint one or more persons to make an investigation to ascertain whether a contravention has occurred and the person appointed shall report the result of his investigation to the Minister.

Readers are referred to The Public Commercial Vehicles Act of Ontario, The Highway Traffic Act and The Motor Vehicle Transport Act (Canada) for specific enforcement authorities. The above excerpts, however, make it clear that enforcement is under the control of the Minister (and Ministry) except for the Ontario Provincial Police; the Board has no authority.

The Public Commercial Vehicles Act was amended in 1973 to make stronger the Ministry's enforcement capabilities. Section 15, subsection c, clause 8, was added to the Act authorizing the Minister to "appoint any expert to assist in examining books, papers, documents or things..."

### 7.3.2 The Ministry of Transportation and Communications

Some laws are more difficult to enforce than others.

If the difficulties the Ministry has encountered in axle weight enforcement could be dismissed, it would seem that "weight laws" are simpler to enforce than are, for example, "leasing laws". It is easier to determine that the lighting on a truck is inadequate than it is to determine whether alcohol is a chemical or whether a waxed turnip is a product of the farm.

This must be kept in mind when examining the successes and failures of the Ministry's enforcement activities in the past. To put this question in its proper context, the Committee quotes at length from the Ministry's testimony:

The very blunt question is, "Does the prosecution, the conviction, the application of the money fine, effectively bring a halt to illegal operation?" I think that legislators, civil servants will have you assume that when you are promulgating legislation to control a certain activity that in order to effect control, you apply an offence, or you create an offence, and you apply penalties to that offence. The point I am trying to raise before you today is to take a close look at just how effective is that process, and I will try to indicate to you that in the area of enforcement of The Public Commercial Vehicles Act, it may not be very effective.

I think we can look at it in two categories: first in respect to licensed operators. I would express the opinion that in respect to licensed operators, that it is reasonably effective because you have the added clout to deal with the person's operating licence in the event that he fails to comply with the law. In building up convictions it puts his operating licence in jeopardy, so that is an added clout that the enforcement agencies or the Ministry has in relation to the licensed carrier.

But what about the unlicensed carrier. Basically, the one who uses leases to avoid licensing? I think that we would have to say that the Ministry's enforcement

experience indicates that the process is not as effective as it might be. In many cases the payment of the fine amounts to a fee to carry on the operation. It is not unusual for the unlicensed operator to build up a list of convictions which will be the results of pleas of guilty and payment of fines out of Court. In fact those fines may be less than what he may be required to pay for a PCV licence fee.

Now what does the Ministry do as an enforcement agency in this situation? The Highway Traffic Act, Section 27, which has been referred to before, gives the Registrar of Motor Vehicles a discretionary authority to cancel or suspend the licence plates on vehicles operator owned, of owners who continue to flout the law. So we have attempted to take action of this type against the operator who continues to violate the law - he continues to operate without a proper licence - to exercise that authority under Section 27. Now, how that works is that an order is made by the Registrar to the operator who has an operating record and he is advised that pursuant to Section 27, and in view of his illegal operating record, or his operating record of illegalities, Section 27 will be applied to cancel the plates on the vehicles involved in that operation.

Now that notice gives that individual an opportunity for a hearing before the actual action is taken to cancel, or suspend those licence plates. The hearing really embraces nothing more than an opportunity for that individual to check on the facts. Are those convictions really registered against him? Is he properly identified? In fact, have we got the right person related to the Order of Suspension into the Record? It is not a hearing to go back into the facts of the case. We are not going behind the convictions. The Registrar's authority is based strictly on the fact that there is an operating record of illegal operation, so that in the exercise of this jurisdiction although there are many attempts made by people involved to go back and discuss the facts of the case, the reason he did not appear, this sort of thing, it is not really relevant. The fact is that that action is being taken based on the convictions which have been registered by the Court. If at that hearing there has been no evidence brought forward that there is any mistake in identity, there is any question about those convictions having been registered, those plates on the vehicles which he has been operating illegally and he is required to bring them in, and if he doesn't bring them in then we take action to have those plates removed from those vehicles.

Now what does this mean? Well before I go on to that, let me say that I want to remind you of the comments made



the last day we were here about the deficiencies in the registration system and the proposal that a Law of Title Registration to tie in the actual owner of the vehicle with the vehicle would be very helpful in enforcement in this area. To demonstrate the value of that to you, in this case that I have given you, there is nothing to prevent the owner of those vehicles transferring the ownership of those vehicles, and of course get them beyond the effects of that cancellation order. It leaves him room to dispose of those or change the registrations, to get them beyond the effect of that order. Now mind you, that really should be done before the order takes effect - if it was done after, there would still be some authority in the order to apply to those vehicles and take the plates off.<sup>9</sup>

Appendix M is an interpretation of an actual case investigated by the Ministry of Transportation and Communications. The names have been changed to protect both the innocent and the guilty. It serves to place the complexities of enforcement in better context.

### 7.3.3 Other bodies

The universe of law which now surrounds public commercial vehicle operations has become complex. Provincial laws are not only enforced by the Ministry of Transportation and Communications and the Ontario Provincial Police. Others are enforced by the Ministry of Consumer and Commercial Relations; the Ministry of Labour enforces others and the Ministries of Environment and Agriculture still others. The federal government regulates transport by highway in still other ways, and there are many, many more examples.

It is simplistic to talk about enforcement and relate that only to transport-inspired Acts. Other Acts and other interests bear directly on transportation concerns and must be recognized. For one example, the Ministry of the Environment has proposed a regulation which it feels "is necessary to complement existing legislation and regulations under



The Environmental Protection Act if the disposal of toxic wastes is to be controlled". The Ministry states further:

We developed the regulation on the basis of our experience with a voluntary way-bill system which has been operating successfully...the liquid waste haulers were consulted early in this exercise and the success of the voluntary way-bill system can be attributed to their overall cooperation. All haulers expressed support for regulations to control the handling and disposal of toxic wastes and believe that these regulations will be a first step in "cleaning up" their industry.<sup>10</sup>

The Committee cannot overstate the effects of all the regulation and all the enforcement activities. "Enforcement" is not a singular noun insofar as the trucking industry is concerned - it is collective, and connotes action by a large number of government agencies, each with its own set of rules to enforce.

There is no central group which enforces all laws - even all provincial laws - in respect of the trucking industries. The lack of coordination of enforcement makes the evaluation of overall government activity towards trucking most difficult to define, let alone evaluate.

#### 7.4 Principles of Enforcement Changes

##### 7.4.1 Administrative and Judicial Enforcement

There are a number of weaknesses in the process of enforcement today. It should be restated that there are two basic types of enforcement; one which involves identifying a suspected violation, laying a charge and prosecuting in court. In other words, enforcement through the judicial process. The other is administrative and may take the form of education, promotion, inducement, and if all else fails, punishment. This is administrative enforcement.

Effective enforcement activities will contemplate both of the above meanings. The extent to which enforcement of one type is emphasized depends on: (a) what powers are available (b) the object of enforcement and (c) the nature of the activity of the one subject to enforcement.

In past years, enforcement has largely been left to the judicial process which is required if Public Commercial Vehicle Act related laws are to be enforced equitably. If it is to work, then

- 1) Offences must be properly and tightly set out in law
- 2) the enforcement agency must be able to identify the accused
- 3) adequate and effective means of obtaining evidence must exist for the enforcement agency keeping in mind the observation of civil rights
- 4) charges must be laid and heard in court as promptly as possible
- 5) the punishments on conviction must be severe enough that they provide an inducement to obey the law in the future and the fines must be paid.

Administrative enforcement is closely linked to the judicial process.

The following statements in the Interim Report set the Committee's views in context:

It may well be that changes in enforcement procedures will be required (page 34)...we believe that the answer does not lie in prosecution (page 42)...the present procedure of removal of registration plates - although not always effective - should be facilitated. (page 45)

The intent of these comments was not to undermine the judicial process. Rather, it was to emphasize that something as an adjunct to that process is required if the regulatory system in this province is to work. Certain forms of administrative enforcement are required in certain cases to augment, and in others instead of, judicial enforcement

of law relating to the commercial movement of goods on Ontario highways.

Three basic avenues of administrative enforcement exist now:

- 1) by the Registrar through Section 27 of The Highway Traffic Act
- 2) by the Board through Section 17 of The Ontario Highway Transport Board Act
- 3) by the Minister, using the Board, through Section 8 of The Public Commercial Vehicles Act.

There are those who feel that administrative action taken after one or a series of convictions is a form of double jeopardy. Some feel this can only happen to a licensed carrier because an unlicensed carrier is not subject to any action by the Board. Because of the special responsibilities and privileges granted by the licence, this is an entirely justified procedure and should be continued. The Committee views administrative enforcement through the Board as being particularly effective in the case of licensed carriers.

It is extremely important in situations where the Ministry or the Board has had complaints that a carrier is charging other than the filed rate. Given the intricacies of tariff structures, only the Board can come to a fair conclusion within a reasonable time frame. Informal referral and/or review is a necessary enforcement tool.

Review by the Board is also essential in certain cases where an operation contrary to operating authority is suspected. If the operating authority is unclear, as many are, it is a more appropriate process to initiate a review rather than burdening the court process with a costly prosecution. It could well be that neither the enforcement agency nor the carrier are clear as to the proper interpretation of the carrier's

authority. This has happened in the past. The courts have asked the Board to clarify the terms of a licence.

The argument of double jeopardy is further weakened because a form of administrative enforcement is also exercised against unlicensed carriers. It is not exercised by the Board, but by the Registrar of Motor Vehicles, under the authority of Section 27 of The Highway Traffic Act. This process has been required in addition to the judicial process.

Thus, administrative enforcement is exercised both in the case of licensed carriers and unlicensed carriers. Administrative review is often initiated only after a series of prosecutions through the judicial process. This is always the case with actions taken by the Registrar under Section 27.

The technicalities peculiar to the transportation industry further complicate the enforcement question. There have been situations where provincial judges have found operating licences difficult to comprehend, others where the courts have referred questionable interpretations of authority to the Board for assistance. The time to complete investigations has become extensive in view of the activities of the unlicensed carriers.

There are many who say that our courts are now terribly overburdened and yet we have others who claim a need for more enforcement which will burden our courts even more.

The Committee does not deny the merits of the judicial process. In its concept of justice, a person must be presumed to be innocent until he or she is finally and formally found guilty of a violation of the



law. The Committee does observe as others have, that the normal avenues of adjournment and appeal may allow an alleged illegal transportation activity to continue for a considerable period of time.

#### 7.4.2 Jurisdiction for Enforcement

"Jurisdiction" is a hotly debated subject in all areas of commercial motor vehicle regulation. It is debated between Federal and Provincial levels of government. It is debated between the Province and Regional Municipalities and between the Regions and area Municipalities. Many aspects of jurisdiction have been fought in the courts.

Government has grown over recent years in Ontario and all other jurisdictions. As it is, government actions with regard to any industry one cares to examine have become complex. There is a need to specialize in government. Yet, the more specialization occurs, the more uncoordinated are a government's actions. Specialization and compartmentalization became factors in the Ontario Government's civil service organization. The inherent problems were recognized by the Committee on Government Productivity and now, weekly meetings are held between Ministers of various ministries within designated "policy fields". For example, there is the Cabinet Committee on Resources Development which includes the Ministers of Transportation and Communications, Natural Resources, Energy, Industry and Tourism, Agriculture and Food and Environment. The theory behind this structure is that each of these Ministries deal with matters of policy and law which more often than not, will affect these



Ministries or, more specifically, will affect the same groups that the others are regulating. While this concept has considerable merit, it can never be totally achieved without convening the entire Cabinet. Take the transportation of goods as an example. An amendment to The Public Commercial Vehicles Act dealing with, for example, the movement of hazardous commodities, has a direct effect on some of the Ministries in the Resources Development Cabinet Committee. But, it also affects the Ministries of Health, Labour, Consumer and Commercial Relations and the Solicitor General amongst others.

Where jurisdiction is split, decision making is more difficult and policy evaluation is fragmented.

This occurs between different levels of government and between ministries at the same level. It also occurs within ministries. A manifestation of this has been the creation in most ministries of "Strategic Policy Groups" designed to coordinate policy, law making proposals and administration.

Jurisdiction over the administration of The Public Commercial Vehicles Act and The Motor Vehicles Transport Act is now split between the Ministry of Transportation and Communications - and the Ontario Highway Transport Board.

In evaluating this statement, readers should recall that effective enforcement involves not only the judicial process but promotion, education and administrative enforcement techniques.

The Committee is convinced that if enforcement as a total activity of government (in the area of public commercial vehicle law) is to be

made more effective, it must be housed to the greatest possible degree under one roof.

The Board's authority to review licences must be clarified and thereby strengthened. Such reviews should not supplant but supplement and sometimes follow judicial enforcement. The Board, therefore, must be involved. It is the agency which has and must continue to have the fundamental expertise in the day to day problems of the trucking industry and of consignors across the province. If the Board is to be effective in determining matters relating to licensing, service, rates and others which are or will be within its jurisdiction, it must have the responsibility, authority and ability.

#### 7.4.3 A Commitment

The Committee examined other jurisdictions and found enforcement activities to be varied. They are varied to the degree they are undertaken and there are differences as to which group undertakes them. In some cases, the regulatory agency enforces; in others, the governmental group (the ministry or the department) enforces. In some cases the responsibility has been exercised by one group and then switched to the other.

The Committee has also examined the practices of other boards and agencies in the Ontario government. While the Ontario Highway Transport Board has no enforcement authority, the Liquor Licence Board for one, does. Readers are referred to The Liquor Licence Act, 1975.

It is clear that there is no one way or one decision which will mean that enforcement is effective. A process must be established, a

commitment must be made. The process and commitment must be coordinated if it is to be evaluated and compared with past or future attempts.

The Committee subscribes to the principle that the Ontario Highway Transport Board should be the single agency responsible for the administration of The Public Commercial Vehicles Act and Motor Vehicles Transport Act as they apply to the regulated for-hire trucking industry and its other related services such as brokers, driver pools, freight forwarders and agents. In so subscribing, the Committee believes that the law and policy to give effect to this change in direction must be carefully drawn. The Committee believes this change can be made and enforcement administered without offending the civil liberties of people. The Committee has observed the McRuer Report and its principles. The Committee cautions the Government to consider the provision of an appropriate appeal structure from both the judicial and administrative enforcement actions of the Board as recommended.

A review of current enforcement activities allow the following observations:

- 1) Administrative enforcement is generally effective and should be facilitated.
- 2) Judicial enforcement is essential and the law should be made easier to enforce.
- 3) The enforcement tools required and exercised are different depending on the circumstance, i.e. the most effective tools to enforce the law against licensed truckers may not be possible or effective tools to enforce law against unlicensed truckers.
- 4) An authority to detain vehicles would be a meaningful enforcement tool.

## 7.5 Means to Facilitate Enforcement

In addition to the question of jurisdiction, some steps must be taken. Committee members have discussed publicly the need to rationalize and improve the overall enforcement of commercial vehicle law. The Committee's collective views on the steps necessary are discussed below. The Committee urges readers to consider the recommendations which result in this chapter with other recommendations in the Report.

### 7.5.1 Offences - Identification

#### Identification

The Committee has made specific recommendations for legislative changes in this Report, many of which are designed specifically to overcome defects in identification. The principle of for-hire transportation services and private transportation services should be defined in law more specifically to facilitate enforcement of offences for illegal or unlicensed for-hire trucking. The Committee comments in Part VI on the specific matters of trip leasing, buy and sell transportation related activities, and lessor-driver/driver pool relationships as matters which need further definition in law so as to make the intent and principle of the law enforceable.

One other fundamental principle of effective enforcement is to facilitate the process of identifying the participants. This will be clear in discussions regarding the registration of lessors, driver pools and transportation brokers. Offences, reasonably easy to enforce must be created for unregistered activities. The registration process in these cases is more fully explored in Part VI, Chapter 2.



In the identification process, it is often necessary to establish the true owner of a commercial motor vehicle. This is difficult to prove under current law since the process of registration does not establish the real owner. The Committee recommends a title law system as a remedy. Virtually all the jurisdictions in the United States now employ such a system.\*

Non-residents may or may not have points of contact in Ontario. In truck transportation, carriers vary in size as well as in character. A non-resident may have large terminals, offices, as well as substantial staff and telephone contacts in Ontario. A small carrier, especially an owner-operator may have none of these. Thus there is no way in which the latter type of non-resident may accept summonses for violations of the law or for payment of taxes. To this end, the Committee recommends the use of agents "for the service of process". In a comparative situation, Ontario law accommodated non-resident carriers who could not comply with Ontario insurance requirements. Reference is made to Section 21(3) of regulation 700 under The Public Commercial Vehicles Act.

#### Shipper Responsibility

The Committee stated in the Interim Report:

(the recommendations of the Committee will have)...detrimental impacts on those shippers who for whatever reason, have been utilizing the services of the unlicensed truckers. It is not significant at this point what those reasons are, as we must assume that shippers generally are rational entrepreneurs and will seek out the transportation service which best fills their need - whether the need be service or cost.

Nonetheless, it is our observation that unlicensed carriage is entered into knowingly by the shipper. He knows who is hauling his goods and his licence status. If he conspires with an unlicensed carrier to cut his own costs in the knowledge of breaking or circumventing the law, then it is money poorly saved in our view.

\*A discussion of title systems, prepared by the Ministry of Transportation and Communications and summary of current U.S.A. experience appears as Appendix Y.



The Committee therefore recommends:

...legislation to mandate: liability and responsibility on a shipper who engages a trucker who is unlicensed.

In so doing, the Committee was impressed by the comments in the Ontario Highway Transport Board's 1966 Report to the Minister of Transport. It stated:

However, once it is conceded that experience has shown some control to be necessary it must logically follow that the regulations and measures adopted in pursuance of the policy to protect the public interest must be effective. Experience has shown that the law cannot be completely effective if it applies only to carriers. The carrier depends for his existence and livelihood upon shippers who tender goods for carriage to him. He is dependent upon their good will.

So long as there are no measures which require shippers to comply with the Act the shipper may feel no compunction in attempting to avoid its effect.

Shippers have sometimes been parties to arrangements for the rebate or return of rates that have brought the rate charged under the filed rate. In other cases they have employed carriers who are unlicensed to make certain movements and as an offshoot to the last have sometimes been involved in leasing arrangements aimed at avoiding the effect of The Public Commercial Vehicles Act.

Carriers for their part are subject to continuing government control. That control is a recognition of the fundamental part that for-hire truck transportation plays in the economy of this Province. In the first instance the carrier is required to meet a fairly rigorous test for entry into the trucking field and once having involved himself and commenced operations he is subject to the control of this Board and The Public Commercial Vehicles Enforcement Branch, both of which attempt to insure that his operations are carried on in a proper manner. In addition the regulations under The Public Commercial Vehicles Act impose an onerous legal duty upon the carrier to insure the safe delivery of the freight which is tendered to him.

There is absolutely no control in The Public Commercial Vehicles Act as now constituted over

other persons who may by their activities do acts harmful to the maintaining of the public interest in an adequate system of for-hire truck transportation.

We wish to emphasize strongly that shipper "irresponsibility" is not rampant and widespread. It has been shown to exist on the part of some shippers. Most importantly we feel that without some legislation aimed at preventing the abuses, they will continue to exist and grow.

In another part of this report we have emphasized that shippers should have protection from discrimination and onerous rate practices on the part of carriers. We have to recommend that shippers must be prepared to themselves bear the responsibility of conforming with The Public Commercial Vehicles Act.

It is noteworthy that legal responsibility on the part of shippers has been imposed by statute in other jurisdictions, notably in the regulations of The Interstate Commerce Commission of the United States and in the Province of Quebec.

#### Recommendations

1. It should be made an offence for any person to contravene or be a party to any breach of The Public Commercial Vehicles Act.
2. The Department of Transport Public Commercial Vehicles Inspection Branch should be accorded the right to inspect all transportation records and documents in the hands of shippers where there appears to have been a breach of the Act.<sup>11</sup>

The Committee notes that The Highway Traffic Act now provides an offence for a "consignor of goods, his agent or employee" who "knowingly causes a vehicle to be overloaded". There have been no charges laid under this Section, although it became effective in May 1976. (See also Part VI, Chapter 1)

The Committee has considered at length whether this liability should be strict. Due to the complexities of the licensing system,

the Committee has determined that guilty intent should form the basis of liability. The intention is to make a consignor liable if he knowingly engages a truck or operator which does not hold registration or licensing authority required by The Public Commercial Vehicles Act. This is at one and the same time a broader but less stringent application of shipper liability than may have been implied in the Interim Report.

#### 7.5.2 Investigatory Powers

It is important to examine existing investigatory powers to inspect books, carriers and shippers premises, etc. Section 15c of The Public Commercial Vehicles Act empowers an appointed officer (of the Ministry) to examine "at any reasonable time, all books, records and documents of the holder of an operating licence...(and he may) enter the business premises of the holder" to do so.

Further, the Minister may "appoint one or more persons to make a (special) investigation" where he believes "on reasonable and probable grounds that any person has contravened any of the provisions of this Act or the regulations". Such an appointment would allow the investigator to examine the books, etc. on the premises of the person suspected. This provision thus extends investigatory power to include those who are not licensed carriers. It is questionable whether this would allow investigations of consignors at the present time because the Act does not prescribe offences for shippers (in relation to unlicensed transportation). The only time one could investigate and get information from the

shippers' records and/or premises under current law appears to be when a provincial judge is satisfied upon an ex parte application by the person making an investigation...that there are reasonable grounds for believing that a more in depth investigation would shed light on the case . The judge may then authorize the investigator with police officer(s) "to enter and search" virtually any premise and to examine either on or off the premises virtually any book, paper, document or thing relevant to the investigation. (Section 15(c)(5) of The Public Commercial Vehicles Act.)

Both the offences created and the investigatory powers required to prove offences must be effective, but they must not be so broad that they offend the rights of the person suspected of having committed an offence. Even more delicate is the balance required between investigatory powers and the rights of people who perhaps unwittingly or unknowingly have become involved in case of unlicensed transportation but not to the extent that it was they who provided the allegedly illegal transportation.

To prove an offence regarding unlicensed for-hire transportation now can be tremendously complex. It will remain an impressive task even if the entire package of recommendations in this Report is implemented.

While investigatory powers may seem broad, there is a need to extend existing powers, balancing that extension with the protection of individual rights.

Assuming implementation of the Committee's recommendations regarding shipper liability, existing Section 15c(2) of The Public Commercial Vehicles Act would empower a specifically appointed officer to examine



shipper documents, etc. However, the noted section now contemplates an appointment for one specific investigation only. This could be extended without offending the rights of those involved.

The recommendations which follow will be meaningful only if there are a sufficient number of investigators and others dedicated to the enforcement of The Public Commercial Vehicles Act. The Government must assign a high priority to the job if it is to be accomplished.

Uniformed personnel in patrol cars represent one part of the overall enforcement activity, and their role should be augmented. There should be a higher priority given to enforcement by patrol car and by audit-inspection rather than through the stations. More people may be required to enforce the laws of the province in respect of commercial vehicle operations, and they could come from reordering the priority assigned to inspection station activity in favour of patrol car activity. This issue must be faced and a decision clearly enunciated as to whether the Government assigns sufficient importance to the principles of The Public Commercial Vehicles Act to commit the reserves and investment necessary to make the Act meaningful.

The Committee considered at great length, the concept that investigatory personnel with powers under 15c reside with the Board. This has a great many attractions. It is organizationally sound as it places the entire responsibility for the administration of The Public Commercial Vehicles Act and most of the responsibility for enforcement in one body, namely the Ontario Highway Transport Board. While this move is organizationally attractive and conducive to an effective enforcement program the Committee is concerned about the very concentration of power that



it would cause. In recommending transfer of enforcement authority to the Board, the Committee urges the government to monitor on the ways and means the authority is used. The Government must be in a position to direct overall broad Board policy and the protection of civil rights must be a vital part of that broad policy.

The administrative efforts of the Board have and will prove to be even more effective in the case of licensed carriers, registered driver pools, brokers and lessors when the Committee's recommendations are enacted. Straightforward, flagrant violations of unlicensed or unregistered carriers of the law should continue to be dealt with in the courts.

The Committee was impressed with the results of the detention of vehicles in the Province of Quebec and in various States. There is the possibility of undue zeal on the part of an enforcement officer or bias or prejudice which could lead to unreasonable interference with the rights of the public to use the highways of this Province. There have been instances of multiple prosecutions of U.S. carriers for minor technicalities which were stopped only by statutory amendment. For this reason it appears desirable to limit the power of detention of vehicles to officers appointed by the Minister to make investigations under Section 15c(2) of The Public Commercial Vehicles Act. Moreover, detention should be permitted only until a suitable bond is posted.

It is felt that use of detention may prevent the continuous disregard for law. While it may delay delivery of cargo, it will create respect for regulation. It should no longer be necessary to charge the same person many times for the same violation. It has the advantage of speed in reaching the owner and shipper.

7.5.3 Punishment for Offences Established During the  
Judicial Process

The Interim Report was clear that there was a need to make more severe the penalties contained in The Public Commercial Vehicles Act. It was stated at page 45 in reference to recommendations regarding unlicensed transportation:

This program will succeed only if existing penalties are substantially increased, backed by jail terms for the individuals concerned in violations of the law including shippers as well as carriers.

Currently, Section 16 of The Public Commercial Vehicles Act creates offences and makes one convicted "liable to a fine of not less than \$50.00 and not more than \$1,000.00". The Committee concurs in the oft-expressed opinion that current fines if paid are paid in lieu of obtaining a Public Commercial Vehicle licence. Fines are so insignificant to the majority of those caught that they provide no economic deterrent to a continuation of the illegal activity. Convictions become a very viable economic alternative - they become a distorted licence to operate. This must not be allowed to continue.

7.5.4 Section 27

The Registrar has proceeded under this authority 37 times in cases involving The Public Commercial Vehicles Act within approximately the last two years. In some 19 cases, plates were cancelled. Approximately 8 had been reinstated from previous cancellations. Approximately 9 others were under appeal.<sup>12</sup>

The Registrar of Motor Vehicles is empowered by the section to suspend or cancel any permit or licence "for misconduct or contravention

of the provisions of this Act (Highway Traffic Act), The Public Vehicles Act or The Public Commercial Vehicles Act or of any regulation thereunder by an owner, operator or chauffeur of a motor vehicle, or, for any reason that he may deem sufficient". In the case of commercial vehicle operations, the Registrar will not and has not acted under the section unless the person involved has been convicted of an offence. The Registrar does not act in cases involving only alleged misconduct or "for any reason he may deem sufficient". The only reason that has been deemed sufficient and supportable is some history of conviction under the noted statutes. Thus, administrative enforcement is invoked only as an adjunct to the judicial process. While the law would not prohibit the Registrar from acting in other circumstances, the consequences of an action to cancel taken in error and the problems of concentration of power in the hands of a civil servant are such that the Committee finds the current policy appropriate.

There are, however, weaknesses in the section. In cases where permits are cancelled for continued violations of the law, the Registrar may effectively cancel only those permits for vehicles registered to the person in question. The cancellation or suspension should be applied to all vehicles legitimately owned or leased by the individual. The section currently makes no reference to leased vehicles. The other question arises because of the existing registration system. In the past, owners whose permits have been cancelled have simply reregistered the vehicles, (the primary individual or company continuing in truth to own the vehicles) and, the illegal operation continues under a different individual or

corporate name. A title law system, combined with a suitable amendment to Section 27 would help overcome this problem.

The Committee finds no solution to the delay factor when a decision of the Registrar to the Licence Suspension Appeal Board and/or (thereafter) to the courts. That protection by right of appeal must continue.

#### 7.5.5 Section 17 of The Ontario Highway Transport Board Act

The Committee subscribes strongly to the nature and intent of this section. The Board must have the authority to initiate reviews of the prior decisions, etc., in any case within its jurisdiction. If the Board is made the licence issuing authority, its power and authority will be significantly greater. It should be clear in law that the operating licence of any person can be reviewed by the Board. The Board should continue to review the operations of licensees who continue to be convicted of violations under The Highway Traffic Act, The Public Commercial Vehicles Act or The Motor Vehicles Transport Act. The Board should continue to review licensees where court action is not feasible from a technical point of view. Two cases already referenced provide guidance: one, where the operating authority is unclear, two; where it is alleged a carrier is not charging filed tariffs. Other cases are a failure of the carrier to comply with the spirit of the Public Commercial Vehicle licence in respect to standards of service, dormancy and insolvency.

There are situations where the Board might receive complaints about the type and quality of service provided by a carrier. It is vitally important that an authorized review of operations be initiated in such



cases, even though the legality of the operation is not in question. The satisfactory performance of a carrier granted privileges by the Crown through a licence, is as important to the people of the province and the spirit of the law, as is legal performance. This is particularly true but not exclusively so in the case of household goods carriers.

The Board's jurisdiction will be increased not only by it becoming the licensing authority, but because there will be more "objects" of regulation. That is, driver pools, transportation brokers and leasing companies will require registration permits if they are to operate legally.

The Committee contemplates that the Board will have the authority to review these types of operations where it proposes to cancel the registration. This is discussed as well in Part VI, Chapter 2 of this Report.

The Committee understands that the current procedures of the Board with respect to the notification of carriers being reviewed are callous. It would be appropriate to require the Board at any time it initiates a hearing of review or a rehearing to give reasonable and confidential notice to the licensee or registrant prior to the notification of the public.

#### 7.5.6 Section 8 The Public Commercial Vehicles Act

The intent and purpose of this section should be continued. The actual provisions would need to be amended to reflect the fact that the Board is the licensing authority. Complementary amendments would be required to sections 12h dealing with a freight forwarder's licence and to section 12i.

## 7.6 Recommendations

The Committee recommends that:

- 1) The Board be assigned the number of qualified investigators and the number of patrol cars and staff to enforce the provisions of The Public Commercial Vehicles Act and The Motor Vehicle Transport Act effectively.
- 2) The Board's role, manpower and activity not be duplicated by the Ministry.
- 3) The Ministry consider like changes to its and the Board's role in the enforcement of The Public Vehicles Act.
- 4) Non-resident carriers, brokers, lessors, driver pool operators appoint an agent resident in Ontario.  
The non-resident file a power of attorney authorizing the agent to accept service of notice or process on its behalf.
- 5) The non-resident file an undertaking to appear in any action or proceeding of which the agent or the non-resident has knowledge.
- 6) The non-resident file an undertaking not to set up as a defence to any claim, action or proceeding a defence that could not be set up if the agent had not been appointed.
- 7) Non-resident carriers of exempt commodities be registered in Ontario and provide
  - (i) For single trips, the name and address of the driver and of the owner of the vehicle; the licence or registration number of the vehicle; the point of entry into and departure from Ontario; the nature and weight of the cargo; the origin and destination of the trip and whether intermediate pick ups or deliveries are to be made; the names of the shipper and of the consignee; the gross weight of the truck, tractor or trailer (hooked up); particulars of insurance for (a) public liability and property damage and (b) cargo; whether fuel tax paid or to be paid or exempt; whether sales tax on vehicle is paid or to be paid or exempt and particulars of operating authority (if any) from any other jurisdiction.

- 7) (ii) Annual. The name and address of the owner of the vehicle; the number of vehicles (a) owned or (b) leased at the date of registration; particulars of insurance for (a) public liability and property damage and (b) cargo; whether fuel tax paid, to be paid or exempt; whether sales tax paid, to be paid or exempt; general nature of commodities to be carried and destinations in Ontario; name and address of an office in Ontario where notices can be sent; particulars of operating authority (if any) from other jurisdictions.

Registration would be subject to review by the Ontario Highway Transport Board.

- 8) A system of title law be implemented in Ontario dealing at the minimum with the ownership of commercial motor vehicles.
- 9) Section 15(c)1 of The Public Commercial Vehicles Act should be amended to the effect:

any officer of the Board may at any reasonable time examine all books, records and documents of the holder of an operating licence or any person who is or whose operation is registered under the authority of this Act.

- 10) Section 15(c)2 of The Public Commercial Vehicles Act be amended to the effect that:

in addition to any other action taken under this Act, the Minister may appoint one or more persons to make investigations under this section which may be initiated at any time that a person appointed believes on reasonable and proper grounds that any person has contravened any of the provisions of this Act or the Regulations.

- 11) Effect be given to this amendment by the appointment by the Minister under the new 15(c)2 of an appropriate number of investigators who will be attached to the Ontario Highway Transport Board.
- 12) Any investigation conducted under this section shall result in a report from the investigator to the Board with indication as to whether charges have or will be laid as a result.
- 13) The report of the investigation shall be made available to the person(s) being investigated.

- 14) Complementary amendments be made throughout the Act where necessary to reflect that the Board is the Agency of enforcement.
- 15) Section 17 of The Public Commercial Vehicles Act be repealed.
- 16) The relevant Act be amended to give effect to the following principles
  - (i) The Registrar may at any time in any case in which he intends to initiate action under Section 27 of The Highway Traffic Act direct terms of reference to an investigator appointed by the Minister under The Public Commercial Vehicles Act and the investigator shall conduct an investigation and report the findings to the Registrar.
  - (ii) Any report of any investigation shall be made available to the person(s) being investigated.
- 17) The Public Commercial Vehicles Act should be further amended to give effect to the following:

An investigator appointed under Section 15(c)2 of this Act may detain such commercial vehicles as are relevant to the subject matter of the investigation until a bond has been deposited in an amount of one thousand dollars for each vehicle detained. The said bond shall be in a form approved by the Board and shall be deposited at the office of the Board in Toronto or at any district office of the Ministry and shall be conditional upon the appearance of the person being investigated at a time and place to be fixed following the receipt of the report in the preceding subsection. In the event that a bond is not deposited within a reasonable time, the detained vehicle may be stored in a public warehouse subject to The Warehousemen's Lien Act of Ontario, and upon the conclusion of the said inquiry, any bond in connection therewith shall be cancelled and returned to the party which has deposited the same.



- 18) The Public Commercial Vehicles Act be amended to increase substantially the fines applicable to all operating or Public Commercial Vehicles Act registration related authority offences and to make jail terms an alternate form of punishment for such offences.
- 19) That fines be scaled, with heavier liability being imposed in the following priority:
  - (i) Offences relating to the provision or use of unlicensed for-hire transportation, or to contravention of a cease and desist order,
  - (ii) offences relating to the provision or use of unregistered services of leasing agencies and unregistered activities of brokers,
  - (iii) offences relating to the provision of a transportation service which is beyond a carrier's existing operating authority under The Public Commercial Vehicles Act and/or The Motor Vehicle Transport Act,
  - (iv) other offences.
- 20) Repeated violations bear correspondingly heavier penalties.
- 21) Injunctive procedure be authorized by suitable amendment to The Judicature Act or other relevant legislation.
- 22) An offence be prescribed in The Public Commercial Vehicles Act for "any person who knowingly engages a for-hire transportation service which is not properly licensed or registered as required by The Public Commercial Vehicles Act or The Motor Vehicle Transport Act or who knowingly conspires or assists in the contravention of any other provision of the two Acts."
- 23) (i) Section 27 of The Highway Traffic Act be amended to delete from subsection 1 reference to The Public Commercial Vehicles Act and The Public Vehicles Act and further by adding a subsection to the effect of the following:

- 23) Where a person who is not licensed or registered as required by The Public Commercial Vehicles Act or Motor Vehicle Transport Act has been convicted on two or more occasions of contraventions of sections 2(1)a, 3(4) or 4 of The Public Commercial Vehicles Act or section 3(1) of The Motor Vehicle Transport Act, the Registrar may after offering an appropriate hearing cancel the permit and confiscate the licence plates of any vehicle to which the person holds title or which is registered or leased in the person's name or in which the person holds a beneficial interest, and no further or other licence or permit shall be issued to such person until the Registrar approves.
- (ii) Existing subsections 2) and 3) be amended in a complementary way to reflect the new subsection above and prescribe the appropriate offences.
- 24) Section 17 of The Ontario Highway Transport Board Act should be amended to the effect that:
- The Board may at any time and from time to time rehear any application and may at any time for continued violations of law and/or for complaints about the type and quality of service offered or the rate being charged and/or failure to observe filed tariffs, review, amend, or revoke its decisions, orders, directions, certificates, or approvals.
- As a result of such a review the Board may amend suspend or cancel any licence or registration issued under the authority of The Public Commercial Vehicles Act or The Motor Vehicle Transport Act, confirm, delete or change any terms, conditions or restrictions in the licence or add new terms, conditions or restrictions.
- 25) The Board may not suspend, cancel or amend an operating licence or registration without giving the opportunity for a public hearing and holding one where and if requested subject to the provisions of The Public Commercial Vehicles Act and The Ontario Highway Transport Board Act.
- 26) The Board in initiating any review or rehearing must give prior and confidential notice to the holder of the licence or the permit being reviewed a suitable length of time before the details of the hearing are published.

- 27) The Board may discontinue the review on its own motion at any time but must give reasons therefor to the parties and to the public.
- 28) The Board may assess costs in such a hearing.
- 29) The Government carefully monitor the exercise of this authority by the Board having regard to an appropriate appeal system.
- 30) The Public Commercial Vehicles Act with particular reference to Sections 8, 12h and 12i be amended to give effect to the following principle:

The Minister may at any time direct the Board in writing to institute a review or hearing under Section 17 of The Ontario Highway Transport Board Act and may make whatever related information available to the Board as he deems fit at the time of the direction, and the Minister shall be entitled to and receive from the Board a full written report of its findings and actions with reasons therefor.

- 31) The Highway Traffic Act be amended to permit highway carrier enforcement patrol cars to carry and display a red flashing signal light.
- 32) The Board may suspend or revoke a licence for non-payment of fines under The Highway Traffic Act or of taxes under The Motor Vehicle Fuel Tax Act.

## PART II - CHAPTER 7

### REFERENCES

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5. Organization of Independent Truckers, Brief, July 1976, Page 5.
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8. Source: Ministry of Transportation and Communications, Reports of Inspections and Convictions, November 24, 1976.
9. Ministry of the Environment, In a letter from E. Biggs, to B.B. Caldwell, November 27, 1976.
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11. The Ontario Highway Transport Board, 1966 Report, Page 132.
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**PART III**  
**Broad**  
**Regulatory Issues**



## CHAPTER 1

### PROVINCIAL RULES AND RESPONSIBILITIES

#### 1.1 Provincial Jurisdiction

Fundamental to the recommendations of the Committee is the assumption of continued provincial control of trucking in Ontario. As stated in the Interim Report on page 14,

The report of this Select Committee does not take into consideration federal legislation that may be introduced after September 30, 1976. This report does not contemplate any federal legislation and assumes the continuation of provincial control over extra provincial road transport as now provided in The Motor Vehicle Transport Act of Canada.

Since that report, the federal government has introduced changes to The National Transportation Act. In addition, the federal Minister of Transport has met with organizations representing trucking and shipping interests. There was a meeting of provincial ministers with the federal Minister in February 1977. The outcome of those meetings suggests that the federal government sees the wisdom in leaving control of for-hire trucking with the provinces.

In assessing recent developments, it is important to place them in the proper historical context.

#### 1.2 The Winner Decision of 1954

Israel Winner, doing business under the name of Mackenzie Coach Lines, operated a bus business between Boston, Massachusetts

and Glace Bay, Nova Scotia passing through New Brunswick. The Motor Carrier Board of New Brunswick had issued the necessary operating authority, but refused to allow the incidental carriage of passengers whose entire ride was within the Province of New Brunswick.

The vital question, according to the Privy Council was what restrictions are or can be placed by the Province of New Brunswick upon interstate or international undertakings by reason of the provisions of The New Brunswick Motor Carriers Act, and whether the terms of the licence actually granted to Mr. Winner are authorized under that Act.

Under The British North America Act of 1867, a provincial legislature may exclusively make laws in relation to local works and undertakings other than those connecting the province with any other province or extending beyond the limits of the province.

The Privy Council considered the phrase "works and undertaking" and decided that the words are to be read "disjunctively" so that if either works or undertakings connect the province with others or extend beyond its limits, the Dominion and the Dominion alone, is empowered to deal with them. By way of illustration reference was made to the absence of "works" in the case of steamships.

Lines of steamships between the province and any British or foreign country can carry on their operations without the existence of any works. The only connecting link which they provide is by passing to and fro from one to the other. Their Lordships must accordingly reject the suggestion that the existence of some material work is of the essence of the exception. As in ships or in buses it is enough that there is a connecting undertaking.

Reference was made also to a prior decision dealing with the regulation and control of radio communication in Canada. The question was whether the control of radio transmission was in whole or in part within the jurisdiction of the Dominion or a province and it was held



that the sole authority resided with the Dominion. In that judgment it was observed that "undertaking" is not a physical thing but is an arrangement under which of course physical things are used.

In a comparison with railways the Court observed that local railways and inter-connecting railways were not within the jurisdiction of the province.

The provinces argued that they make, maintain and control the roads, which are "local" works, and in that capacity each province is entitled to regulate their use in any way it pleases and indeed to prohibit their use if it so wishes.

The contention is an important one because if it is true inter-provincial undertakings connecting one province with another are within the jurisdiction of the Dominion, but can be totally sterilized by Acts and regulations of the province curtailing or preventing the use of its roads. It was alleged that the roads are the property of the province - as indeed they are - that roads of one province are divided by an imaginary line from those of another province or another nation at the point of meeting; there is therefore no connecting work and, their roads being local, the province has absolute power over their use, i.e. both the method of use and whether they may or may not be used at all.

Their Lordships are not concerned to dispute either the provincial control of the roads or that it has the right of regulation but there nevertheless remains the question of the limit of control in any individual instance and the extent of the power of regulation.

It would not be desirable nor do their Lordships think it would be possible to lay down the precise limits within which the use of provincial highways may be regulated. Such matters as speed, the side of the road upon which to drive, the weight and lights of vehicles are obvious examples but in the present case their Lordships are not faced with considerations of this kind nor are they concerned with the further question which was mooted before them viz. whether a province had it in its power to plough up its roads and so make inter-provincial connections impossible. So isolationist a policy is indeed unthinkable. The roads exist and in fact form a connection with other provinces and also, in this case, with another country. Since in their Lordships' opinion, Mr. Winner

is carrying on an undertaking connecting New Brunswick both with Nova Scotia and the State of Maine there exists an undertaking connecting province with province and extending beyond the limits of the province.

Further,

the province has indeed authority over its own roads but that authority is a limited one and does not entitle it to interfere with connecting undertakings. It must be remembered that it is the undertaking not the roads which come within the jurisdiction of the Dominion, but legislation which denies the use of provincial roads to such an undertaking or sterilizes the undertaking itself is an interference with the prerogative of the Dominion.

Whatever provisions or regulations a province may prescribe with regard to its roads it must not prevent or restrict inter-provincial traffic. As their Lordships have indicated this does not in any way prevent what is in essence traffic regulation but the provisions contained in local statutes and regulations must be confined to such matters

Finally, the Privy Council examined the possibility that the local service picking up and discharging passengers solely within New Brunswick could be separated from the rest of the business. In other words, what would happen if Mr. Winner was engaged in two enterprises one within the province and the other of a connecting nature?

Their Lordships, however, cannot see any evidence of such a dual enterprise. The same buses carried both types of passengers along the same routes; the journeys may have been different, in that one was partly outside the province and the other wholly within, but it was the same undertaking which was engaged in both activities.

No doubt the taking up and setting down of passengers journeying wholly within the province could be severed from the rest of Mr. Winner's undertaking but so to treat the question is not to ask is there an undertaking and does it form a connection with other countries or other provinces but can you emasculate the actual undertaking and yet leave it to the same undertaking or so divide it that part of it can be regarded as inter-provincial and the other part as provincial.

The undertaking in question is in fact one and indivisible. It is true that it might have been carried on differently and might have been limited to activities within or without the province,

but it is not, and their Lordships do not agree that the fact that it might be carried on otherwise than it is makes it or any part of it any less an interconnecting undertaking.

A comparison was then made with the telephone business which had been the subject of a decision in 1905.

The undertaking of the Bell Telephone Company was no more a collection of separate and distinct businesses than the undertaking of a telegraph company which has a long distance line combined with local business, or the undertaking of a railway company which may have a large suburban traffic and miles of railway communicating with distant places.

One note of warning should however be sounded. Their Lordships express no opinion as to whether Mr. Winner could initiate a purely provincial bus service even though it was under the aegis of and managed by his present organization. No such question however arises or has been raised.<sup>1</sup>

The result was that federal jurisdiction was confirmed over extra provincial road transport under section 92(10)(a) of The British North America Act. Perhaps the most crucial finding was that intra-provincial operations of a company engaged in extra-provincial transport could not be separated from the whole. The operations were "one and indivisible" and therefore fell under federal jurisdiction.

Canadian problems are no longer referred to London and heard by the Privy Council. The Supreme Court of Canada is now the court of last resort. In the opinion of many lawyers, the Supreme Court of Canada can, in the future, differ from (and thereby in effect overrule) a prior decision of the Privy Council of England.

### 1.3 The Motor Vehicle Transport Act

The Winner decision "came as a shock to everyone. Neither the federal government nor the provincial governments had sought nor were they prepared for such an outcome."<sup>2</sup>

The decision created a regulatory vacuum. The federal government, without an administrative tribunal, staff, regulations or expertise, could not implement comprehensive legislation. The result was The Motor Vehicle Transport Act Canada, 1954 which delegated to the provinces the responsibility to regulate the for-hire industry. The Act provided inter alia:

The Provincial Motor Transport Board in each province may at its discretion issue a licence to a person upon like terms and conditions as if the extra provincial undertaking operated in the province were a local undertaking.

The years 1954 to 1967 saw discussions at all levels of industry and government with respect to the strengths and weaknesses of The Motor Vehicle Transport Act. The MacPherson Royal Commission on Transportation, which reported in 1961, challenged "not only the assumptions underlying federal policy towards the motor carrier industry, but also much of the conventional wisdom of existing national transportation policies."<sup>3</sup>

The Motor Vehicle Transport Act did serve to fill the regulatory vacuum. It did not provide any impetus for the provinces to coordinate regulation or to make uniform law. Therein lay the weakness of the law and of its application by the provinces.

The Motor Vehicle Transport Act did not delegate jurisdiction.

The judgment (John D. Coughlin vs. The Ontario Highway Transport Board, et al.) of the Supreme Court of Canada on April 29, 1968, settled the question of the validity of the federal legislation known as The Motor Vehicle Transport Act which came into force in Ontario by proclamation September 15, 1954. At that time hearings were conducted



by the Ontario Municipal Board. The Ontario Highway Transport Board was created by legislation passed in the following year, 1955.

It was argued then that the Parliament of Canada had abdicated its power to make laws in relation to the subject matter of inter-provincial motor vehicle carriage and had unlawfully delegated that power to the provincial legislatures.

In previous cases, it was made clear that neither the Parliament of Canada nor a provincial legislature is capable of delegating to the other, or of receiving from the other, any of the powers to make laws conferred upon it by the British North America Act. On the other hand, it is well settled that Parliament may confer upon a provincially constituted board the power to regulate a matter within the exclusive jurisdiction of the Parliament of Canada.

Many of the agricultural marketing boards operated under this concept.

As then observed by the Chief Justice:

In the case before us the respondent Board derives no power from the legislature of Ontario to regulate or deal with the inter-provincial carriage of goods. Its wide powers in that regard are conferred upon it by Parliament. Parliament has seen fit to enact that in the exercise of those powers the Board shall proceed in the same manner as that prescribed from time to time by the Legislature for its dealings with intra-provincial carriage. Parliament can at any time terminate the powers of the Board in regard to inter-provincial carriage or alter the manner in which those powers are to be exercised...

In my opinion there is here no delegation of law-making power, but rather the adoption by Parliament, in the exercise of its exclusive power, of the legislation of another body as it may from time to time exist, a course which has been held constitutionally valid...  
4

#### 1.4 The National Transportation Act

The federal government reevaluated its national transportation policies in response to criticisms from industry and the MacPherson Commission. The re-evaluation culminated in The National Transportation Act, 1967. Part III of that Act provided for direct federal government regulation of the extra-provincial motor carrier industry.

The National Transportation Act was designed from a federal perspective to correct the anomalies of the existing regulatory system.

The motor carrier industry demanded recognition as a major competitive force...the existing system of provincial regulation of the inter-provincial and international operations of the industry if allowed to continue, would undercut the competitive relationship between modes that was at the heart of the new transportation policy."<sup>5</sup>

Part III of the National Transportation Act was passed by the Parliament of Canada but has not been implemented.

For a number of reasons, the provisions of Part III were of concern to the provinces. The concerns varied from province to province, but the key issue was fear of complete preemption by the federal government. A significant portion of the for-hire industry in Canada, and therefore in Ontario, is extra-provincial in the terms established by the Winner decision and Part III. If implemented, Part III would give the federal government the means to control a large part of the industry in Ontario. The province would therefore lose control in very large part over the use of its own highway network by commercial motor vehicles.

Part III flew in the face of provincial aspirations to invoke policies to reflect local and regional needs which vary so dramatically from province to province.

### 1.5 Federal - Provincial Discussions

Suffice it to say that Part III has not been implemented and that it has been the subject of significant federal-provincial-industrial discussion since 1967. Part III came to represent "a classical conflict within a federal state: a clash between national and regional policy objectives".<sup>6</sup>

As the federal government from time to time renewed its initiative to implement Part III, the frequency of discussions heightened at certain periods. This is indicated in the following chronology:

- 1954 - Provincial Council Decision on Winner Case 1954
- 1954 - Motor Vehicle Transport Act
- 1961 - MacPherson Royal Commission
- 1967 - National Transportation Act
- 1969 - 1972 - Federal-Provincial Negotiations on Part III
- 1972 - 1975 - Hiatus in federal interest
- 1976 - Renewed interest by federal government resulting in proposals by officials, revisions and meetings. Provincial Ministers met in Quebec City, September 14th.

In the federal government's view, the 1976 federal initiative was justified on the grounds of unresolved practical problems and lack of federal policy leverage. The position was based on the assumption that without federal involvement, provinces could not work together to rationalize the regulation of extra-provincial motor carrier undertakings.

Rather than a complete implementation of Part III, what was under discussion in 1976 was new legislation which in simplified form would provide:

- the federal government the authority to issue orders in council re: regulations and policy directives;

- the provincial boards the authority to:
  - act as registry of domiciled carriers
  - make decisions regarding intra-provincial activities of extra-provincial carriers
  - participate in joint hearings and decisions;
- the Canadian Transport Commission the authority to:
  - participate in joint hearings regarding international activities, acquisitions and mergers, and extra-provincial rates
  - receive annual and statistical reports on extra-provincial carriers from the domicile boards.

Enforcement apparently would have remained as a provincial responsibility.

Many questions as to the actual workings of such a system were not answered by the federal government.

Further meetings have been held subsequent to the initiative of Transport Canada, formerly known as the Department of Transport, in 1976.

The recent federal-provincial discussions have been more conciliatory. The Federal Government has apparently moved from a position of implementing Part III, to amending The Motor Vehicles Transport Act, to now discussing with the provinces the most appropriate means of bringing uniformity, where necessary, to the regulation of extra-provincial motor carrier undertakings.

A meeting in February 1977 of the Federal Transport Minister with his provincial counterparts produced the following results:

(The federal Minister) and the provincial Ministers requested the Standing Committee on Motor Carriers of the Canadian Conference of Motor Transport Administrators to study and report on the areas of activity in which regulatory policies and procedures should be uniform, the extent to which such uniformity is desirable in order to ensure the smooth flow of goods and people across the country, the means by which this uniformity could be brought about. This report will be discussed at the next annual meeting of the CCMTA Ministers in the Fall of 1977.



Responsibility for the regulation of extra-provincial carriers - in general terms, those that operate across provincial or international borders - comes under the federal jurisdiction. In 1954, this responsibility was delegated to provincial governments under The Federal Motor Vehicle Transport Act. While the National Transport Act of 1967 included provisions designed to return this responsibility to the federal government, through the Canadian Transport Commission, these provisions have not been implemented in a general way.

(The federal Minister) and the provincial Ministers agreed that the delegation to provincial governments has worked reasonably well and has meant that regulation of federal carriers has been responsive to provincial and regional needs. At the same time, however, they noted that delegation has led to a number of problems, some of which result from the provisions of The Motor Vehicle Transport Act, which does not encourage uniformity among provincial regulations.

(The federal Minister) and the provincial Ministers expressed satisfaction at the opportunity to have a full and frank exchange of views about this subject, particularly about the role of the federal government in regulating extra-provincial motor carrier undertakings. (The federal Minister) noted the desirability in principle of leaving the responsibility for regulatory decisions with provincial governments, and noted that this would help to ensure that such decisions continue to be responsive to provincial requirements.

Provincial Ministers in turn noted (the federal Minister's) concern to ensure the smooth and efficient flow of people and goods across provincial and international borders, and recognized that there was a role for the federal government in achieving this objective. In this regard, the provincial Ministers invited (the federal Minister) to participate more fully with provincial Ministers in the work of the Canadian Conference of Motor Transport Administrators.<sup>7</sup>

The position adopted by Transport Canada was consistent with Ontario's most recent proposals. The Committee understands that the position taken by Ontario was shared by the majority of provincial transportation ministers. It represented a hard line which, if followed, would lead to meaningful federal-provincial discussions. The position recognized need for uniformity in certain areas of regulation and recognized that some form of federal presence in the field might well facilitate the process. Appendix N contains a copy of a letter from the Ontario Minister

of Transportation and Communications to the Federal Transport Minister clearly outlining the Ontario Government's position.

#### 1.6 Other Forms of Federal Involvement

The activities of this Committee produced references to the federal government which are summarized briefly.

Federal carriers by rail, water and air are significant factors in the provincial transport scene. The Canadian National Railways and the Canadian Pacific Railway operate extensively on the highways of Ontario through wholly-owned subsidiaries. Canada Steamship Lines controls a substantial fleet of vehicles. Together, the federal carriers own an important part of the total number of commercial vehicles operating for-hire in Ontario. The railways are the owners of some of the largest fleets of commercial vehicles in Canada.

It is observed that all of these federal carriers have accepted provincial control over their highway transport functions. There has not been a challenge of the right of a provincial body to regulate a highway transportation function which is incidental to the main business of either of the large Canadian railways.

Federal and provincial integration is usually discussed under the heading of "inter-modal" cooperation. This activity involves publication of a single rate by the participating carriers and the issue of single bill of lading for the entire movement. Such cooperation does not exist in Ontario. The federal carriers operate independently of the provincial for-hire carriers in such matters.

A shipment which has been sent with instructions to the carrier to collect the value of the shipment before delivery will not be passed

for delivery from a rail carrier to a licensed highway transport unless and until the highway transport pays in full for the value of the shipment. The federal rail carriers do not publish tariffs which show the names of connecting road carriers. These attitudes are not in keeping with the best interests of the shipping public.

Customs facilities operated by the federal Department of National Revenue have kept pace with the changeover in the transportation of imported goods from rail to road. The construction of customs warehouses at inland points and the adoption of various modern inspection and accounting procedures indicate a progressive approach to the subject of this inquiry.

The federal government is involved in highway transportation in other ways and many of these will be dealt with specifically in other parts of the report.

#### 1.7 Conclusion

Given the attitudes of the provincial and federal Governments, it is safe to assume that the Province of Ontario will retain the ability to regulate the for-hire trucking industry which uses its highways. The Committee finds compelling the provincial arguments in favour of such retention. However, it is vitally important that uniformity be brought to the regulation of extra-provincial trucking. The Committee can therefore endorse the undertaking of the federal government to explore ways and means of achieving this goal within the forum of the Canadian Conference of Motor Transport Administrators.

Particular matters of great significance to the trucking industry

which require attention are listed below. They divide into two categories, one dealing with operating authority, the other with non-economic regulations.

A. Matters dealing with operating authority include

1. Obtaining complementary authority in another jurisdiction where it is necessary to complete an extra-provincial undertaking;
2. Coordination between jurisdictions of rate approvals where a rate covers extra-provincial movements;
3. Extra-provincial movements between and only between adjoining urban municipalities of two provinces.

B. Matters dealing with non-economic regulations include:

1. Hazardous commodities
2. Bills of lading
3. Sales tax
4. Fuel tax
5. Registration fee apportionment
6. Movement of livestock
7. Metric conversion
8. Weight and dimensional differentials
9. Vehicle standards

These matters are dealt with in other parts of this Report. Those in category A can best be dealt with by joint meetings of provincial regulatory boards but if the meetings are to produce a meaningful result, some common objectives must be set. It is the definition of these objectives and principles which will pose the problem for provincial authorities. The task at hand must be dealt with and it cannot be dealt with parochially. In the absence of real progress, the people



of this Province and in all of Canada will suffer.

It should be noted that hearings were held in the fall of 1976 involving the regulatory agencies of Ontario, Saskatchewan, Manitoba and Alberta and the Ontario Highway Transport Board has from time to time held joint hearings with the Manitoba Board. Furthermore, the Chairman of the Ontario Highway Transport Board has recently held informal meetings with his counterpart from Quebec seeking formal agreement for joint Board hearings in appropriate circumstances.

The Ontario Highway Transport Board is to be complimented for its initiative but at the same time reminded that much more must be done.

#### 1.8 Recommendations

The Committee recommends that:

1. The Province of Ontario, through the Minister of Transportation and Communications, continue to demand roles and responsibilities in the regulation of extra-provincial trucking which are strong and substantively the same as now afforded by the Motor Vehicle Transport Act;
2. Ontario take a leading role in discussions to bring uniformity to the provincial regulatory schemes through the Canadian Conference of Motor Transport Administrators and through other appropriate forums;
3. Ontario promote and encourage joint hearings of regulatory bodies on matters involving extra-provincial motor carrier undertakings;
4. Ontario take a broad view of the necessity for uniformity in terms of taxation, economic and non-economic regulations and enforcement;
5. Ontario's primary goal in such discussions be to make as efficient as possible the movement of goods by highway to the benefit of shippers, carriers and the general public.

## PART III - CHAPTER 1

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## CHAPTER 2

### CONTROL OF ENTRY TO THE FOR-HIRE TRUCKING INDUSTRY

#### 2.1 The Interim Report

The discussion in the previous section presupposes the continuation of some form of economic regulatory control of the for-hire trucking industry in Ontario. An assumption of continued provincial control, a feeling for the existing market structure of the transportation industry, for rate levels and the rate making process, and for current problems of the existing regulatory system are inextricably linked to a determination of the validity of economic regulation of the trucking industry. In other words, there is no proper sequence in which to present this subject in relation to others dealt with in the Report. It is, however, vital that the Committee's commitment to the principles of economic regulation of the for-hire motor carrier industry is stressed.

The Committee stated in the Interim Report:

As stated in the "Backgrounder" issued by the Ministry of Transportation and Communications April 20, 1976, prior to the Committee's appointment,

The provision of transport services on a for-hire basis has been a traditional activity of entrepreneurs for centuries. The evolution of surface carriage on public rights-of-way has come a long way from the horse and dray of medieval Europe to today's capital intensive transcontinental trucking firm, employing thousands of men responsible for sophisticated transports capable of hauling fifty tons of goods at high speeds over modern roads.

In the evolution, several inherent characteristics of the industry have become apparent. The glamour of independence draws many individualists into the industry. Many of these people are not trained in management processes; most of them start out with insufficient marketing data with which they could justify their decision to enter the industry in the first place.

Low technological requirements of the industry effectively remove lack of skill from being an entry barrier. In addition, the low capital requirements for initial entry act as a heady inducement to would-be entrepreneurs. As a consequence, chronic conditions of over-supply prevail. This has led to a history of instability wherever industry entry has not been controlled. In fairness, it must be stated that the large and medium size trucking firms which exist within the Ontario economy have a great deal of sophistication in their management.

Nevertheless, in those jurisdictions where entry control did not exist in the early days of the trucking industry's growth, conditions of chaos existed for the users of the service, as well as the providers. Shippers would find that carriers with whom they contracted for carriage were improperly insured, or not insured at all, so that lost or damaged goods became a shipper liability; that the vehicles were unreliable, due to poor maintenance; that the drivers were overworked and less than careful with the goods and that the carriers were unreliable even as to their very existence.

In summary, the "here-today-gone-tomorrow" character of the industry imposed a real loss upon the economy at large.

These symptoms were the direct result of an excess of supply of transport services. This led to frantic cost-cutting, beyond the limits of prudence, by all carriers as they struggled to survive.

In places, social unrest characterized the operators' expressions of dissatisfaction with the circumstances. It is small wonder that authorities responded to these situations by instituting a system of entry controls which were designed to: protect the shippers by ensuring that a stable and adequately financed source of supply was available to them, and to protect the operators against destructive competition by controlling industry growth.

Regulations can and do go beyond entry control. It can embrace conditions and methods of providing service, the tariffs to be charged for such service, safety of the equipment used, protection of the employees' conditions of work, limiting the right to stop servicing, and many offshoots of the foregoing. However, in its simplest form it is an attempt to protect three parties; the shipper, the carrier, and as a consequence of these two, the general public interest.<sup>1</sup>

Transportation is important to society. The invention of the wheel introduced a new use for energy. Roads make possible the movement of goods from the point of supply to the point of demand. A surplus at one place may be a necessity at another place. People produce goods which can be exchanged for other goods.



Transportation as a development tool has the ability to assist in the bringing of equity to people, to communities, to producers and to our society in general. Transportation makes more land accessible and thus has an impact on the value of that land. It makes wider markets accessible and thus it affects investment. It moves energy and consumes energy.

Of 3,260 Ontario communities served by the regulated trucking industry, only 943 or 28.9% are served by rail.<sup>2</sup> Small communities are vital to Ontario. They not only contribute to our provincial economy but also to our way and style of life. Regulation is important to these small communities to ensure their economic and social survival. A large percentage of these communities ship by truck for outgoing products and rely on trucks for their inbound shipments.

There has been an undeniable growth of the highway sector of the transportation system. Impetus to longer hauls was given by the railway strike in 1950. Trucks then started operations from Ontario to the east coast and to the west coast. This was a milestone in the growth of the industry. In 1974 the regulated truck industry in Ontario earned some 1.2 billion dollars.<sup>3</sup> When that is compared to the expenditure of 4.5 billion dollars on all transportation in Canada<sup>4</sup> the significance of highway transportation in this Province is apparent. The regulated industry in Ontario employs approximately 60,000 people.<sup>5</sup> These figures do not include the movement of highway goods by private and by unlicensed carriers.

It is in the public interest to ensure that Ontario has:

- (a) the ability to move goods;
- (b) the flexibility to expand, contract or shift that ability in recognition of changing market situations;
- (c) the flexibility to move goods to assist in the achievement of objectives outside the transport system;
- (d) the ability to control the movement of goods so that it will be:
  - (i) safe
  - (ii) energy efficient
  - (iii) equitable in its availability
  - (iv) regular and stable
  - (v) affordable.

The whole question of the use of transportation policies to equalize consumer costs in the Province will be dealt with in our Final Report.

The need for these abilities forms the basis for government involvement in the highway transport industry. We have been told that for-hire transportation should be the servant of industry and not its master. Beyond that, however, we recognize that the movement of goods is a public necessity and must serve not only industry but also the greater area of public interest...

It is difficult to report in a few pages the many views presented to us. While there were some individuals and organizations who thought otherwise, the overwhelming view of industry was against total deregulation. Those in favour of deregulation, including the Organization of Independent Truckers, the Canadian Manufacturers Association, and the Canadian Federation of Independent Business, seem to have relied on the identical academic authorities for support. We were puzzled to find that the views of the Ontario Division of the Canadian Industrial Traffic League differed from the views of the Canadian Manufacturers Association. The Chairman of the Canadian Industrial Traffic League, the national body, was a member of the delegation of the Canadian Manufacturers Association. Moreover, the few substantial manufacturers which took the time and trouble to appear before us did not express the same opinions as did the brief of the Canadian Manufacturers Association.

It is impossible, in our view, to quantify all the pros and cons of economic regulation; and it is equally impossible to predict quantitatively what the effects of economic deregulation would be. Thus, we base our conclusion admittedly on opinion, but opinion which we believe to be practical, realistic, concerned, reasoned and unbiased.

We believe that it is prudent to retain economic regulatory controls over movement of goods on Ontario highways. To retain capability for that movement is an absolute necessity; to retain influence and control over the shape and nature of that movement is clearly in the public interest.

The Canadian Manufacturers Association brief began with the following quotation:

The primary thrust of policy in our view should be to promote adaptability and flexibility in the economy and to provide both pressures and incentives to develop new products and services as well as new methods of production and distribution which will more effectively meet the needs and desires of society. Protected positions, whether protected by the government, by custom, or by private organization and manipulation, should be laid low and be critically examined in the light of these broad purposes. <sup>6</sup>

The Committee agrees, although we have arrived at a different conclusion on how best to achieve these lofty objectives.

The Canadian Manufacturers Association "seeks a system that will be competitive and efficient".<sup>7</sup> The Organization of Independent Truckers stated, "We favour the proper regulation of the transportation industry to ensure that the shipping public receives safe, reliable and economical service".<sup>8</sup>

The Canadian Federation of Independent Business stated their "basic objective is to promote and protect the free competitive enterprise system in Canada...our concern..is a case of favouring the interests of the... public in general who are consumers of trucking services".<sup>9</sup>

The Committee agrees with all these goals, and we go farther, to state that there are other public objectives which can only be met by an efficient, safe, reliable goods movement industry. It is for that very reason that economic controls are required.

Entry to the industry is relatively free from the point of view of investment, although the cost of equipment is increasing as are the costs of labour and fuel.

There is a considerable difference of opinion with respect to economies of scale, although we feel that there are some economies in less-than-truckload operations. To the extent that this is true, a scale barrier to entry would tend to exist here where it is generally agreed that it would not in truckload operations. The cost structure of less-than-truckload operations will be significantly different from truckload operations, and show more investment than truckload operations (with similar on-road equipment) and will tend to be more labour intensive.

There are traditional arguments in support of regulation centred on the following beliefs about deregulation, namely that it would:

1. lead to chaos
2. result in non-compensatory truckload rates
3. limit the supply of trucks
4. result in poorer service and/or higher rates to small communities
5. result in more unsafe trucks
6. impede technological development by loss of capital investment motive
7. lead to instability of employment
8. simply not have the effects that the proponents feel it would.

Those who favour deregulation say that regulation results in:

1. higher costs
2. misallocation of resources (empty backhaul)
3. uncompetitive supply market.

They believe that deregulation would return the highway transportation industry to more competitive market forces which, on balance, would lower rates.

Continued regulation on the other hand is favoured because it ensures stability, growth, capital investment, wide service and reasonable rates.

We believe based on testimony of the Chairman of the Ontario Highway Transport Board and other individuals who have appeared before the Board, that entry to the industry can be gained<sup>10</sup> and that, therefore, there is a competitive injection to the supply side on a continuing basis.

We observe and find relevant the experience of the dump truck industry in Ontario. Deregulation did occur in that industry and relative chaos was the result.



In a 1975 report on the trucking industry published by the Canadian Transport Commission, at page 25, the following appears:

"In Alberta (during the years 1950 - 1972) where there was unrestricted entry and rates were unregulated, relatively more bankruptcies were caused by low rates and excessive competition, resulting in 13.2% of the Province's total bankruptcies. These factors accounted for only 5.8%, 6.6% and 7.7% of trucking bankruptcies in Quebec, Ontario and British Columbia respectively. 11 "

Another source states that:

"The highway transportation industry is a high risk business. The risk level would be increased tremendously for the industry (by deregulation) if industry returns are currently inadequate to compensate for the added risk incurred. Deregulation would hasten the flow of capital away from this industry... 12 "

These comments imply two things to the Committee (1) that the small man still has an opportunity to enter the industry in Ontario, and to exercise his democratic right to compete in business; and (2) that if the industry were to be unable to attract sufficient capital it would have dire effects on the industry and on the goods distribution system generally.

The point about risk and capitalization bears further comment. Long term debt in the industry is generally high. For Ontario licensed carriers, the percentage of debt to capital is 64.1% on average. 13 Carriers must depend on a steady cash flow to service this debt, and to the extent that deregulation would reduce cash flow, it would make debt servicing more difficult, if not impossible.

We are not satisfied by the arguments of the deregulationists in reference to the experience in other jurisdictions. We have met with the U.S. Department of Transport, who support the principle of deregulation and have reviewed testimony and documentation provided us. We do not know whether that principle will receive Congressional approval. We met as well with the Interstate Commerce Commission and the American Trucking Association, and have reviewed their side of the argument. We have called and heard testimony from experts from Australia and England who take a view diametrically opposed to those who claim the benefits of deregulation in those countries.

In short, we have found the arguments for deregulation based on these countries to be contradictory and inconclusive.

We must have due regard to the fact that Ontario is surrounded by other jurisdictions, all of whom regulate domestic, interprovincial and foreign road transport.



Deregulation in Ontario could lead to a "take-over" by regulated carriers from outside Ontario. In effect, Ontario carriers would fare badly in their ventures outside the Province while the carriers from the regulated areas could operate without restriction throughout the Province. This happened in Alberta. After complete deregulation by the Social Credit Government, that Province found great dissatisfaction by Albertans in respect of extra-provincial traffic. As a result, controls and restrictive measures were brought back to regulate truck movements crossing Alberta boundaries.

Taken in context with our statement that the movement of goods by highway must be available and must be controllable, the case for government regulation becomes in truth much broader.

Without regulation:

- No one would certify that carriers have the necessary fitness to serve the public
- There would be no assurance that a carrier must be properly responsible in case of loss and damage, or for the collection and payment of C.O.D. accounts.
- It would not be possible to prevent a carrier from picking and choosing customers.
- There would be an absence of rules for the protection of inexperienced consumers (such as housewives) when they have their household goods moved.
- It would be difficult to settle disputes between shippers and carriers and between carriers and other carriers.
- There would be a tendency in some cases for carriers to charge what the market would bear.
- There is doubt as to who would serve small towns and communities or whether they would be served at all.
- It is to be expected that big shippers would wring concessions out of small carriers.
- It would be awkward to come to the aid of the consumer who found his only recourse in a transportation dispute was to go to court.
- There would be no effective protection against monopoly pricing and destructive competition.
- The customers of the transport companies would not have channels for complaints other than to the carriers themselves.
- New products would be less likely to be marketed without a stable transportation rate system.

## 2.2 Subsequent Comment

### 2.2.1 Europe

The Committee has reached the conclusion that control of entry to the industry should be continued, a conclusion which is supported by the information gathered in Europe and by the research done for this Report. The Committee refers readers to the discussion on rates and Appendix D, the European Report.

Over-the-highway transport companies in Western Europe are different from Ontario firms. The base of their traffic is different in many cases and the distances travelled are not comparable.

For example, in Belgium a prospective professional trucker must apply for a short distance Class P licence. One licence is required for each vehicle to be operated. A "P" licence entitles the holder to operate a maximum of 25 kilometers from his place of business. After three years, for which he must prove a predetermined level of profitability, he is eligible for a national Class V licence. This licence limits the size (capacity) of vehicle to be operated. After six years, for which certain levels of profitability must be shown, the individual may obtain a free national licence.

To transport internationally, the operator must, in addition to other requirements, successfully complete an examination. International transport is subject to quotas imposed either through bilateral negotiation or by the European Economic Commission.

Each year less than 50% of those carriers in Belgium who are eligible for a national licence by virtue of a three year operation do become national transporters. Trips by "V" licence holders average 50-100 kilometers.

Thus, while entry to the industry is free and expansion can occur

nationally if established objective standards are met, two other facts emerge.

First, free entry with a 25 kilometer radius is virtually meaningless to the Ontario situation. Cartage operations within the limits of an urban municipality are exempt from Public Commercial Vehicle licensing. Entry is free. Entry to the cartage business has also been achieved freely through "grandfathering" when effective urban zones have been established. A carter who enters the business and who is entitled to serve the urban zone of Metropolitan Toronto has a range far greater than 25 kilometers. To this extent, the Belgian system is no less regulated than is Ontario's.

Second, it is imperative to note that in Europe, expansion to the national level is not automatic. More importantly, the ability to compete internationally is severely restricted by the imposition of quotas. The largest operators in Belgium tend to be those operating internationally, and they are controlled.

The situation is surprisingly similar in the tightly regulated West German system where the tightest control is over long distance road transport. Quotas are set by ministerial decree and determine whether or not entry is possible.

Entry to the industry as a short distance transporter in Germany is much freer, in part because it is not a source of competition for rail. There are in reality two or more systems in each of these jurisdictions.

It would be incorrect to assume that Ontario's for-hire industry is regulated economically while Belgium's is not. There are similarities in terms of the freedom to enter the industry, to serve highly populated, closely linked developed areas.

Capacity limitations and quota systems are amongst the purest forms of economic regulation.

To compare one jurisdiction with another, one must identify the particular portion of the systems being compared. It is necessary to compare the regulatory system by firm size, by area served and by the service being performed. Economic, social and geographic differences must be taken into account as they surely affect the structure, performance and needs of the for-hire truck transportation system.

The needs of a jurisdiction with massive land areas and uneven population distribution, with many communities not served by rail and with comparatively undeveloped frontiers, are clearly different from those of a jurisdiction with shorter distances, high population concentrations, advanced industrialization and rail ownership.

The Committee did not visit any jurisdiction which did not have some form or degree of economic regulation. Put another way, the Committee did not visit one in which the for-hire trucking industry is "economically deregulated". This is particularly true of firms which compare in size, distance travelled and service rendered with the majority of Ontario's over-the-highway for-hire firms.

All that can be compared across those jurisdictions whose systems were studied are various types of economic regulation. In some cases the economic restrictions are placed firmly by the government for all to see and in others they are simply allowed to apply themselves in the absence of positive government legislation.



### 2.2.2 The Ontario Highway Transport Board

In addition to testimony regarding comparison of other jurisdictions to Ontario, the Committee was advised that entry to the Ontario industry was extremely difficult.

The Committee perused the published statistics of hearings before the Ontario Highway Transport Board. Excluding application for approval of the transfers of licences, it appears that roughly 87% of all applications heard in the last ten years have been approved. This is the result of all applications, including buses.

This figure, although interesting, may be an over-simplification. It does not indicate whether applications have been granted in whole or in part, nor the significance of applications denied. Nor does it show the number of applications which were withdrawn or contemplated but not filed because of real or imagined barriers to entry. In 1971 for instance, 225 applications were withdrawn. A possible reason for such action by an applicant lies in the receipt of formal notices of objection from opposing carriers. The data is shown in Table 1.

Complaints heard by the Committee of excessive barriers to entry have been investigated and appear to be without foundation.

If the for-hire trucking industry is not a public utility, it is the industry closest to it that has not been so recognized. The for-hire trucking industry, where it is not legislatively regulated economically in terms of both entry and operations, is market regulated by powerful union and shipper groups.

TABLE I

ONTARIO HIGHWAY TRANSPORT BOARDAPPLICATIONS AND DECISIONS

<u>Year</u>	<u>Public Hearings</u>		<u>In Chambers</u>	
	<u>Granted</u>	<u>Denied</u>	<u>Granted</u>	<u>Denied</u>
1966	928	202	1,522	95
1967	906	301	1,005	89
1968	946	134	1,148	55
1969	958	184	676	20
1970	1,010	198	571	15
1971	1,261	279	351	11
1972	969	263	312	103
1973	1,009	146	460	29
1974	1,199	250	389	14
1975	1,010	207	336	19
	-----	-----	-----	-----
Total Public Hearings	10,196	2,164	6,770	420
Add, in Chambers	6,770	420		
	-----	-----		
Totals	16,966	2,584		
Percentage granted		87	Percentage denied	13

Source- Ontario Highway Transport Board Annual Reports

### 2.2.3 Government Imposed Costs

Another factor which influences carrier cost levels is the cost imposed on the trucking industry by government. This may take the form of vehicle registration fees, public commercial vehicle licence fees, insurance, Workmen's Compensation payments, vehicle inspection programs and the costs of economic regulation of entry into and the operation of the industry.

There is a widely held opinion which suggests that economic regulation of the industry leads to higher costs, which lead to higher rates than otherwise would be the case. <sup>14</sup> The Committee agrees that regulation per se does add cost to the operation in the short run. However, it would argue over the significance of the increase caused by - and only by - economic regulation in the long run. The Committee suggests that real costs cannot be compared to the costs or rates which would otherwise be the case. The Committee is not convinced that comparisons are possible among jurisdictions because of profound differences in market structure, economic development, distribution patterns, traffic imbalance, geography, infrastructure, levels of inter-modal competition and the degree of collective rate-making.

Perhaps most significantly, the effect of economic regulation cannot be judged for Ontario as a whole. That is to say, the system

affects different routes in different ways. There is more competition on some routes, in some locations and for some commodities than there is for others. The effects are different with respect to general freight than they are for specialized operations like float and tank operators, to mention two.

Some analyses suggest that no conclusions about the effect of regulation on either costs or rates can be drawn from current data.<sup>15</sup>

Much of the work which concludes that regulation leads to higher costs attempts to measure the degree to which that system inhibits competition. Much of the initial criticism of transport regulation attempted to measure the effects of rate regulation in the process, not entry controls. The main impetus behind the deregulation movement in the United States is derived from the effects of rate regulation.

The original Sloss articles to which considerable testimony referred assumed only four regulated provinces - British Columbia, Saskatchewan, Manitoba and Quebec. Ontario was classed as non-regulated because it did not (and still does not) regulate rates. Dr. McLachlan did not even consider Ontario in his main analysis. Dr. Palmer, in reacting to Sloss and McLachlan stated in part:

However the problems still exist; if there were regional shifts in demand and different regional rates of inflation from 1958 to 1963, and if the trucking industry did not fairly rapidly respond to these regional differences, one suspects that trucking rates during that period were not entirely cost determined and these results, along with previous ones, are open to question pending further research." 16



A recent paper on this subject stated:

In the debate over the relative advantages and disadvantages of trucking regulation, there are relatively few opportunities to appeal to empirical evidence to resolve disputes. Opportunities to trace the impact of deregulation in situations where this has occurred are few and far between, and, independent of the methodological problems of resolving whether this action had been "good" or "bad", the generalization of the results of such experiences is complicated by the fact that most of them have taken place in foreign countries, with specific industry structures, competitive conditions and institutional frameworks, or have occurred in highly specialized areas of the trucking industry (for example, agricultural movements in the United States and dump truck operations in the Province of Ontario in Canada).

In the light of this paucity of opportunity for empirical analysis, the case of the Canadian trucking industry, (in which differing regulatory structures have been established by each of the ten provinces) takes on a special importance. Among the examples of empirical analysis cited in motor carrier regulatory debates, the Canadian case is unique in being based primarily on cross-sectional analysis rather than on time series analysis, thus avoiding the problems of changes in market conditions and other exogenous factors during the period of analysis...

References to the Canadian situation in regulatory debates rely heavily on the results of four articles published by three authors: McLachlan, Palmer and Sloss, each of whom has concluded that regulation of the motor carrier industry has raised rates by between 0.68 and 2.5 cents per ton-mile. The existence of three separate authorities, each arriving at similar conclusions, is somewhat illusory. The principal analysis performed by each of these authors has been the same: the fitting of a multiple regression equation with "revenue per ton-mile" as the dependent variable, and the testing for the effect of regulation either by the inclusion of a dummy variable or by the analysis of residuals from the resulting equation for "regulated" and "non-regulated" groups of traffic. In addition to similarities in approach (and model specification), each author also employed the same basic data.

It is the thesis of this paper that the results of McLachlan, Palmer and Sloss are open to severe question, doubts arising from three major directions: the definition of "regulation", the specification of the model, and the quality of the data employed.

The major conclusions of the paper are that the use of multiple regression analysis to detect whether regulation has raised trucking rates is inherently limited, and that correction of

the faults of previous analyses leads to results that contradict those of previous authors...

The failure of the model(s) presented here (either to fit the data well or to resolve the question of whether regulation affects rate levels) is itself the major conclusion of this paper. However, a number of important lessons may be drawn from consideration of the reasons for this failure.

First, we shall deal with the specification of the regulatory variable. The attempt to refine this specification must be judged a failure in that the respecification did not add significantly to the fit of the model. In fact, the respecification added to the difficulty of fitting the model, because of the correlation between the three regulatory dummies and the other exploratory variables (for example, labour cost and licence fees). However, this failure is not the fault of the specification but of the limitations imposed by the facts of the Canadian situation. If one is to ignore the Atlantic Provinces, as there is every justification for so doing, then there are only six Provinces and twelve regulatory structures (intraprovincial and extraprovincial for each Province) left to consider. The use of three regulatory dummies to distinguish four categories of regulation results in categories that include only one or two Provinces (no rate filing and rate prescription respectively), which clearly creates problems in the confounding of the regulatory status and the other non-homogeneities between the Provinces. The use of data from a set of different commodity groups does not solve this problem, since within a given Province-to-Province lane, the values of the regulatory variable and such variables as labour cost, maximum weight, sales tax, and so on, are all constant from one commodity group to another. Similarly, if the inflation rate across Canada is constant, then data from separate years will differ only by a constant ratio and will also fail to solve this problem. (If the inflation rate is not constant, then this creates problems of its own, as was discussed above).

It would appear, therefore, that in attempting to use the Canadian situation to measure the effect of regulation, one is forced either to employ a single regulatory criterion (i.e. to group together disparate regulatory structures) or to specify a model that accounts for all the non-homogeneities between the Provinces that may be expected to have an effect on rates. This is the problem of model specification to which we now turn.

The number of factors that it may be reasonable to include in any model is clearly large, and the model employed in this paper shares with those of previous researchers the fault that it excludes a number of potentially significant variables (e.g. the mix of common and contract carriage). As has just been noted, this problem (which exists for nearly all attempts to use regression analysis), is particularly acute in this situation, because of the relatively small number of Provinces (and hence regulatory structures) between which we are trying to distinguish.

There is, however, an even more crucial problem of model construction. Even if a "complete" set of exploratory variables were available, there is strong justification to believe that many of them should not be included in the model because of their possible interaction with the regulatory variable. Apart from the previously noted use of Provincial rather than trucking industry wage rates, to avoid any interaction between labour costs and regulation, interactions may be hypothesized to exist between regulation and any of the following: length of haul, common/contract mix, extent of empty backhaul, average shipment size, and a host of cost variables. Whether or not such relationships exist, the existence of an a priori hypothesis concerning these interactions makes model specification an extremely difficult, if not impossible, task.

In the light of these comments, the ultimate conclusions of this paper must be that: (i) little confidence can be held in the results of previous attempts to use regression analysis to detect the effect of regulation; (2) the results of applying this technique to more recent (and reliable) data are somewhat inconclusive but seem to suggest that there is no strong relation between rate regulation and rate levels; and (3) the technique of regression analysis is inherently limited with respect to solving the question of whether regulation of the trucking industry raises trucking rates, and future prospects for its successful application are not promising.<sup>17</sup>

It is easy to confuse the issue by talking about carrier's costs and rates as if they were the same. It is reasonably clear that current rates are not purely cost-based rates, that they do not always bear a constant or predictable relationship to costs. Rates must be cost-related or Ontario would be facing failure after failure in the trucking industry. While this has occurred in certain segments of the trucking industry, particularly those not subject to economic regulation - for example dump vehicles, garbage, leasing companies - enough regulated firms are making sufficient money that there is a reasonable degree of stability at this time within the for-hire industry. Revenues earned from aggregated rates are generally sufficient to sustain the industry.

These general comments may seem obvious. Nonetheless, it is important that these conditions continue. A stable trucking industry is of vital importance to the people of Ontario.



The Committee is not convinced that regulation of entry to the industry in Ontario adds a significant cost to a trucking operation when amortized over the life of the company. It follows, therefore, that the Committee is not convinced that generalizations about the lessening of competition in the industry caused by entry control contributes in a significant way to increased rates. It is conceivable that the behaviour of the regulated industry in the areas of cost efficiency and rate establishment could lead to higher rates than might be ideal in some cases. Where this occurs, it may be caused not so much by the control of entry as by operational controls and by lack of volume, therefore competition, on particular routes. Clearly, there are other costs placed on the trucking industry by government action which may have greater effects on the industry and individual firms.

Registration fees place an annual cost per vehicle between \$33.00 and \$2,228.00. Over \$70 million was collected through this fee in 1976. Public Commercial Vehicle Licences range from \$17.00 to \$600.00 per vehicle per annum. Over \$7.7 million was collected from this fee in 1976. Gasoline is taxed at 19¢ per gallon, diesel fuel at 25¢ per gallon used in Ontario and these result in significant costs to the trucking firm. In 1976, Ontario collected \$72.9 million in diesel fuel tax and \$505.1 million in gasoline tax. No allocation can be made to the for-hire trucking industry, but the majority of diesel fuel tax is collected from truckers, both private and for-hire. This does not contemplate the federal fuel taxes now at 4¢ per gallon. Cost to the for-hire trucking industry of Workmen's Compensation payments is unknown, but in 1976 was based on \$3.95 per hundred dollars of payroll. Ontario



for-hire carriers employ over 60,000 people and an estimate of an annual payroll of \$600 million would not be out of order. Rate group 656 was assessed approximately \$21 million in 1976. The bulk of this would have been paid by for-hire trucking firms. Sales tax on transportation services and all equipment adds greatly to the cost of that service to the buyer. It has been estimated that for-hire trucking firms paid over \$27 million in income tax in 1974. Every vehicle and transportation standard which government adopts - hazardous commodity, livestock, covering and securing of loads regulations are examples - adds to the cost of a commercial trucking operation.

It is impossible to single out one particular aspect of government action as contributing to increased costs. Clearly, the increased costs caused by government activity must be viewed in the aggregate. Cost-benefit relationships then must be struck for the sub-program to be evaluated.

All of those who supported economic deregulation of the industry did so in part because they believed that carrier costs, thus rates and shipper costs, were inflated by the presence of regulation. Yet virtually all supported stricter safety standards for trucks and the application of tests of fitness, willingness and ability to new truckers.

This approach is motivated by inflexible adherence to a principle, not by an evaluation of the hard costs. No one except the truckers presented to the Committee any hard data on the Ontario experience with regard to costs of shippers or carriers or to rates.

The cost additions to the shippers of Ontario may be far less under the current system than they would be in a tightly controlled, safety-only "fit willing and able" regulatory environment. Regardless, it would be necessary to establish some real measure of costs which would be applicable for all goods, of all weights, over all ranges of mileage, to and from all types of centres to reach a quantifiable conclusion. Such figures and expertise are simply not available.

The costs of motor carriers are substantial. The Committee noted in the Interim Report that the percentage of debt to capital for Ontario licensed for-hire motor carriers was 64.1% on average. The Ontario Trucking Association reported in their original brief on a cross-section of carriers serving Ontario. The figures presented showed an average net profit of 3% as compared to revenue. Actual figures varied from a high of 7.7% for a group of four Ontario-British Columbia carriers to a low of minus 6.1% for three mobile home transporters.<sup>18</sup>

These figures are quite low. The Committee does not conclude whether or not the figures are representative of the entire industry, or the extent to which the low figures are caused by high (inefficient) costs as compared to low rates.

Clearly, the for-hire industry has some "excess capacity", to the extent that the ratio of trailers to power units is reasonably high.

There are those who might criticize this fact on the basis that it increases costs, hence rates. The Committee sees this as a natural outflow in response to the demand for service by shippers, made practical by the regulatory system. While extra capacity is more costly to the carrier, it may reduce shippers' costs to the point where the

net result is lower cost in the production-transportation process as a whole, just as in the case of many private truck operations.

### 2.3 Recommendations

The Committee recommends that:

1. The Ontario Government through the Ontario Highway Transport Board continue to apply economic regulatory controls to for-hire trucking operations in Ontario, consistent with the principles and specific recommendations in this Report.
2. Effective competition be enunciated as a primary goal of entry control, subject to the needs of communities removed from major markets.

## PART III - CHAPTER 2

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## CHAPTER 3

### OPERATIONAL CONTROLS AND THE LICENSING PROCESS

#### 3.1 Licence Classifications

Operating licences have been issued in Ontario for over fifty years. The concept of classifying licences into groups is not new. A report by the Ontario Highway Transport Board entitled a "Study and Review of Public Commercial Vehicle Operations in Ontario" was prepared in 1966. It was not formally published at that time, as it was a report to the then Minister of Transport.

The conclusions of the authors were founded on information gained at public hearings to which all interested persons were invited. It dealt with several matters including the history and nature of various class of licences. The report did result in amendments to The Public Commercial Vehicles Act but not all of its recommendations were adopted.

That report confirmed the concept of classification process, which has been in effect and subject to refinements since the inception of The Public Commercial Vehicles Act.

The terms of reference for the Committee specifically required that this issue be examined. The Committee was to report on "the system

of classifying carriers in relation to types of commodities, routes or types of vehicles as opposed to general classifications of common or contract carriage".

The concept of classification involves:

- 1) the identification of unique types of transportation service; uniqueness has been based on type of service, commodity groupings and/or vehicle types;
- 2) the assignment of a designation to each group identified; to date this has been done alphabetically, thus the existence of classes A, C, D, E, F, FS, H, K, T, X, R and L;
- 3) formalization of a description of those characteristics which make each group unique in the law;
- 4) issuance of licences and privileges in accordance with those classifications;
- 5) enforcement in accordance with those classifications.

The terms of reference do not question the concept of classification because they suggest a differentiation between common and contract hauling. The question posed by the Legislature was the extent to which one recognizes uniqueness in the structure of the classification system.

In principle, the Committee finds the concept of classification acceptable. One witness described the current system as providing "a convenient form of shorthand".<sup>1</sup> Others have said it leads to unnecessary complexity in the licensing process.<sup>2</sup>

Descriptions based on commodity type are in many cases difficult to enforce. Determinations must be made either in the original laying of charges or in court with regard to the following considerations:

Whether or not, for example, a waxed turnip is a product of a farm, alcohol is a chemical, ore and crushed rock are one and the same, or plywood is lumber.

Classification by vehicle type is easier to define and enforce.

Currently, both Class H and T licences are identified as unique in part in terms of vehicle type. In addition, there are coincident connotations of "type of service" in both licence types. These classes are also identified by types of commodities which may be moved under the authority.

Class T operators have exclusive rights, by virtue of the provision in the regulations under The Public Commercial Vehicles Act that:

No person shall transport bulk commodities in a tank vehicle upon the highway unless he is the holder of a Class T operating licence.

However, to confuse the issue, Class T privileges may be attached to a licence of another class.

Class H operators have limited exclusive privileges. The holder of a Class A licence may obtain authority to carry used household, office or store furniture, but to carry those commodities a carrier must hold either a Class H licence or a Class A licence with "H" type privileges.

Exclusiveness in terms of commodity type or vehicle type is limited in the regulations to the "H" and "T" licence privileges. However, other limitations, including limitations as to commodity and/or vehicle type may be attached to any class of licence through a certificate from the Board.

Class R licences are exclusive. One must hold a Class R to perform the services contemplated by the "R" definition. A Class A licence may then hold a separate Class R licence.

Class K licences are defined in terms of the movement of heavy commodities "that require special loading devices and cannot be carried on a standard truck or trailer". Class K licence holders used to be the exclusive operators of a float equipment until the total fee was moved to the power unit. Now, although the Class K remains in the regulations, a Class A carrier is not restricted from performing the operations implied by the Class K description.

The definition of Class K remained unchanged after the 1966 report of the Ontario Highway Transport Board, despite recommendations designed to improve it. As the Board stated, "there are formidable difficulties with the definition as it is now constituted". The Board went on to say:

No definitions are given of the terms "standard truck, trailer or semi trailer", "similar equipment" and "special loading devices". In addition, the detailing of the licence by the type of goods to be carried has caused considerable difficulty in the interpretation of licence privileges."<sup>3</sup>

In the 1966 report, the Board made the following comments regarding classifications:

The present method of classifying licences by a lettered system of nomenclature has proved to be useful. From the point of view of the public, this system has served to make particular types of truck transportation service more readily discernible. From the aspect of administration it makes for considerable facility. Certain problems have arisen in the classifications from time to time but after careful study we are of the view that the present system of lettered classifications is superior to other modes of designation. This Board respectfully recommends the retention of the present mode of designating licences. We have, however, come to the view that certain amendments within the classifications would be desirable and in the public interest.

In making its proposals in the area of licence classifications the Board has been guided by the following principles:

- (a) to consider and review the privileges contained within a licence category and to extend the same where a demonstrable need for additional or supplementary service has been shown to exist;



- (b) To clarify and particularize as far as possible the operations that may legally be carried on within a given category while at the same time allowing for some reasonable measure of flexibility for the transportation service that may be provided.<sup>4</sup>

In reviewing the present classifications, the Committee is not certain that the benefits seen in the past have been fully realized. The Chairman of the Board testified before the Committee that he would now prefer a more general system of classification;

He stated:

The classification of carriers by alphabetical order is obsolete. We recommend their deletion. Instead, carriers (should be) known as

- 1) common carriers
- 2) contract carriers
  - a) named commodities<sup>5</sup>
  - b) named shippers

It is not the concept of classification which leads to the complexity of the present licensing system; it is the complexity of the classifications and the nature of the terms, conditions and restrictions which are placed in licences. All jurisdictions visited by the Committee classify licences granted to the for-hire truck transportation industry. Even those which are said to be "deregulated" classify their carriers. European jurisdictions tend to classify according to distance: for example, one licence may be required to operate with a 25 kilometer radius, another for a 150 kilometer radius, and another to the national boundaries. The American Interstate Commerce Commission's basic classification identifies regular route carriers as distinct from irregular route carriers and exempt carriers as distinct from both.

It must be recognized that the existing system in Ontario has deep roots. It has been established in law since the enactment of The

Public Commercial Vehicles Act. It influences every hearing before the Board and every decision rendered. Carriers and shippers have become accustomed to it. The Ontario Trucking Association is organized along the same lines as the licence classifications. Investments have been made by the industry based on the current system.

A change in this system cannot be considered lightly. It must involve an examination of the conditions and restrictions which are now placed on licences. A simpler classification system would solve nothing if the complex and sometimes ambiguous terms, conditions and restrictions continue to be applied.

### 3.2 Operational Controls through Restrictions, Terms and Conditions

#### 3.2.1 Impact of Operational Controls

Much of the testimony received by the Committee centred on the question of entry control. There was very little testimony with regard to economic operational controls. It is to be assumed that those who favour freedom of entry in an economic sense also favour freedom of operation in an economic sense. Those same groups, however, proposed safety inspections and other "non-economic" controls on the operation of all trucking firms.

The case of those opposed to regulation was weakened by the lack of differentiation between entry and operational controls. No effort was made to separate the effects on costs either to the carrier or shipper.

Assuming that competition, both inter and intra modal, is not unduly restricted, the major costs imposed by government regulation are not likely to be those occasioned by entry controls. They are more likely to be imposed by ongoing operational controls. If restrictions

such as those on fleet size, truck capacity and size of load are applied to a licence, their effect will be felt virtually every day by the carriers. The same is true of limitations to hours of work and environmental regulations. Needless to say, taxes imposed by governments also add ongoing costs.

The Ontario Highway Transport Board, working with the established licence classification process, has the authority from The Public Commercial Vehicles Act to "prescribe terms and conditions to govern the transportation of goods...and to approve the conferring by the licence of special, exclusive or limited rights with respect to the operation of public commercial vehicles..."

Traditionally, this authority has been used to restrict licences to certain commodities, certain shippers and/or certain origins and destinations.

Some examples of terms, conditions and restrictions extracted from existing licences follow:

1. "Restricted to 12 commercial motor vehicle and trailer combinations"
2. "Restricted to commercial motor vehicles having a maximum gross weight of 8,000 lbs."
3. "Restricted against operation of tank vehicle and no individual shipment shall exceed 30,000 lbs."
4. "Restricted to shipments not exceeding 16,000 lbs. and only when carried on top of a bulk load"
5. "Provided that the load bearing equipment surface of the equipment utilized be of a height not less than 45 inches from the ground."
6. "For pre-stressed concrete beams on pole trailers... provided that the beams be not less than 40 ft. in length."

7. "One person's goods only at a time to be carried on one trip...also for goods which by their nature, size, weight or shape require special loading or unloading devices and the use of low bed float equipment...'low bed float equipment' is defined as an unenclosed trailer other than a standard truck trailer or semi-trailer having more than one load bearing surface provided that a goose neck shall be deemed to be a load bearing surface."
8. "No movement of telephone poles"
9. "Restricted to two commercial vehicles only, each with a carrying payload of not more than 5,000 lbs."
10. "Movement of new boats prohibited"
11. "Restricted to gross weights which exceed 140,000 lbs."
12. "Parts attachments and accessories for the above provided the same may be carried only if their transportation is incidental to the transportation of the goods described"
13. "No individual drum, pail, box, bin or bag of the said produce to weigh less than 25 lbs." <sup>6</sup>

These examples are typical of the terms and conditions which are placed on operating licences. Although no examples were cited above, limitations as to a named place or to named shippers and as to distance are even more common.

The imposition of such conditions raises questions far beyond and far more significant than the concept of entry control. They relate to the viability of the entire process of operational limitations in their present form in respect of:

- flexibility of the carrier
- cost to the carrier
- cost to the shipper
- cost to the government
- energy
- traffic volumes
- enforcement.

It is the adversary situation in hearings which leads to the current maze of limitations and restrictions in licences. These do not



exist because of any government policy with respect to limiting fleet size for example.

Restrictions and limitations reflect the give and take which occurs during a hearing. Therefore, the imposition of restrictions and limitations is to a degree self-perpetuating. Licences become more and more complex. The terms and conditions contained in the licences will become more difficult to enforce and respect for the regulatory system may be lost. This is a critical situation.

It is difficult to understand many of the conditions in existing licences looking at them after the fact, however, the Committee will not presume to comment on each one for to do so would require amongst other things, a specific knowledge of the particular case, competing carriers and the actual hearing.

### 3.2.2 Fleet Size

The effectiveness of restrictions on fleet size as a means of regulation is difficult to assess. As stated in the Interim Report, the Committee found no evidence to support such a general policy.

The Chairman of the Ontario Highway Transport Board stated before the Committee:

Fleet size of individual operators is a debatable subject. On the one hand, we see the growth of corporate units in the transport business whether generated internally by an increase in customers or externally by means of amalgamation with other companies. We are told that such a process will lead ultimately to the disappearance of the small trucker. On the other hand, it is our experience that the number of small truckers is not declining and that competition continues to exist. The Board is a firm believer in the democratic system of free enterprise. We are not aware of monopolies which adversely affect the public interest. It is our constant endeavour to encourage competition consistent with the continued viability of the competing carriers. Although "bigness" in and of itself cannot be equated with efficiency, nevertheless experience has shown that with proper management the size of a large fleet may make possible economies and systems which would otherwise not be available. We cannot deny to our licensees the right to grow and prosper in response to public demand but we can and do inject sufficient new entrants into the field<sup>7</sup> to maintain proper balance in favour of the public interest.

Reviews could of course result in the removal of restrictions from smaller operators or the imposition of new restrictions on larger operators. In view of this and the need to foster a balance in the industry, this subject should receive the ongoing consideration of the Ministry of Transportation and Communications and the Ontario Highway Transport Board.

### 3.3 The Writing of Licences

Regardless of what is done with respect to classifications, licences must be simplified. Readers will be aware of the recommendations (in Part II of this Report) that the Board be the licensing body and that consideration be given to automating the licensing process. The proposed examiners will help to simplify and clarify new applications and other changes in the process required.

### 3.3.1 Privileges

A carrier now licensed is assigned a class of licence. Where a carrier holds more than one type of authority, the class designed reflects a priority assignment. For example, a carrier with Class A and C authority will be given a Class A licence with C privileges. The Class A licence holder may have C, D, E, F, FS, H, K or T privileges.

Beyond the basic priority of Class A authority, the general principle is that a class of the higher PCV fee structure will be assigned. Class A, C, D, T and K carriers pay one series of vehicle fees, Class R, E, FS, H carriers pay lower fees. For example, if a person holds a Class H licence and through subsequent application obtains Class A authority, he would be granted a Class A licence with H privileges.

The requirement to be assigned a class of licence is based on the requirement that each vehicle operated under the authority shall bear a Public Commercial Vehicle plate and that:

Public Commercial vehicles shall be classified in accordance with the classification of the operating licence under which they are operated...

The Committee attempted to quantify the number of licences and privileges held and sought information from the Ministry of Transportation and Communications. On a particular day in January, a computer run of the Public Commercial Vehicle file<sup>8</sup> showed that there were 2,293 privileges attached to 8,905 licences. No privileges can be appended to a Class R authority, so excluding the Class R licences, the number of privileges would represent a 40.4% increase in the number of authorities. There were obvious errors in the statistics provided which meant that licence numbers were understated and privileges were overstated. However, the principle remains that the current system has created an unnecessary distinction in fact and in statistical reporting between licences and privileges.

Statistics regarding public commercial vehicle operations should reflect the number and type of privileges held as well as the actual number of separate firms which hold the licences. Without this information, it is impossible to evaluate the regulatory system.

This discussion of privileges and the general use of the term underscores the Committee's understanding of what a Public Commercial Vehicle Licence actually is. Some feel that a licence confers rights



on the holder. The Committee disagrees. The licence confers privileges to which a licensee should be entitled and for which he should be responsible. The licensee is entitled to continue to hold such a licence only so long as he obeys the terms, conditions and spirit of the law and the licence. As it is a privilege to drive in Ontario, it is a privilege to operate a licensed for-hire transportation service.

### 3.3.2 Extensions

From time to time a carrier licensed in a certain class or holding a certain privilege will apply for and be granted an extension to that authority.

Other charges are possible with regard to the terms, conditions and restrictions of a particular licence.

In most cases, the Board does not integrate the terms contained in the new certificate with the terms of previous certificates. This

results in the extensions being tacked on to the existing licence rather than incorporated into the previous terms, conditions and routes of the licence.

The resulting narrative description in the licence is disjointed. It could refer for example to empty gas cylinders at the start of the licence and again at the end. Privileges, terms and conditions of extensions which deal with a place, route or commodity already dealt with by the licence should be coordinated with those previous descriptions in the body of the licence. This will make licences more consistent, easier to read and interpret.

A term often used in reference to licence privileges is "except as otherwise prohibited or restricted herein". To understand the licence, all other restrictions in sometimes very lengthy licences must be reviewed to determine whether or not the carrier has the authority being examined.

One such example from a Class A licence is:

Highway 2 between and including (Place A) and the eastern extremity of the said highway (no local business permitted between Place A and Place B - restricted to pickup or delivery of goods from or to points on other routes in the licence except as otherwise restricted therein.)

That provision is dependent for its interpretation on all other provisions of the licence. In this particular case, the entire licence description takes three and one half pages in the Ship by Truck Directory. The actual licence resident with the Ministry is some 80 pages long.

Whenever a licence authority is modified or extended, the licence should be rewritten to incorporate the new privileges.

### 3.3.3 Highway Numbers

The Committee stated in the Interim Report:

Here we call attention to the traditional language used in operating licences within the categories known as Classes "A" and "X" to describe common carrier routes. This is usually done by highway numbers. In many cases, reference is made to "intermediate points". There are many variations in the language of licensing. For instance, reference may be made to an area "west of Highway 11 and south of Highway 7", to named counties, to points within a mileage radius of a named centre, or to regional municipalities or parts thereof.

In due course, the Board should be able to inform the public as to the names of the carriers licensed at any given point. Communication to the public is an important part of the availability of transportation services. Knowledge of existing facilities should be a by-product of regulation.

The Committee therefore recommended:

1. Operating licences to be issued to common carriers in the future should set forth points and places to be served. The inconsistency in the Regulations between the definition of a Class "A" carrier, which deals with places to be served, and the form of a Class "A" licence, which deals with the route to be followed, should be removed.
2. Existing operating licences containing erroneous highway numbers should be reviewed by the Ontario Highway Transport Board with a view to clarifying the authority of the licensee.

These recommendations have been criticized in the belief that the use of a highway number can describe precisely the geographic limits of an operating authority. For example, a carrier may have an unrestricted route authority for King's Highway #2 between Windsor and Cornwall. He is entitled by regulation to serve all points within 1½ miles of that portion of Highway 2. If all the places served were listed, the licence would be more complex. Names of municipalities change too as they grow and in some cases amalgamate.

The Committee agrees with the logic of these arguments. However, highway numbers should not be referred to where a naming of places to be served is feasible. Furthermore, where highway numbers must be used to simplify the provisions of the licences, those licences should be updated to reflect changes in highway numbers as they are made. The Ministry should advise the Board whenever highway numbers are changed.

A conscious attempt by the Board to licence according to named place would give it the ability to inform the public of the carriers licensed at any given place. If places rather than routes are named, it will no longer be necessary to "tack" one authority on to another. It will make the carrier's operation more flexible and therefore improve his ability to serve the shipping public. This is particularly relevant in Class A operations. If a licensee is entitled to serve only named places or points, it is not important how he gets there.

Where places rather than points can be named, the licences will be easier to enforce.

Where places rather than highway numbers can be named, the need to change the licence is reduced.

The Interim Report's recommendations in this regard will simplify the process. The principle is that where feasible, places should take precedence over points, routes and highway numbers in the description of authorities. When places cannot be named, the Board should at least be aware of those places which a route authority obligates the carrier to serve.



### 3.3.4 North Bay Restriction

The Committee stated in the Interim Report at

Page 77:

In the development of road transport, around 1936, a distinction was made by the then Department of Highways between Northern and Southern Ontario. Highway construction was not as rapid in the north. The Trans-Canada Highway had not been built. As a result of deliberations by the Ontario Municipal Board and after considering the position of the Ontario Northland Railway (or its predecessor, the Timiskaming and Northern Ontario Railway), it was decided to impose a restriction on all licences under The Public Commercial Vehicles Act. Licensees who resided south of North Bay would not be authorized to operate north of North Bay and licensees who resided north of North Bay would not be authorized to operate south of North Bay. Residents of southern Ontario whose authority enabled them to operate north of North Bay were thereupon restricted from doing so. Conversely, licensees resident north of North Bay were restricted against operating south of North Bay.

Exemptions from this policy were allowed for carriers of automobiles and movers of used household goods. The Class "A" operation of Walter Little Limited (as it then was) between Toronto and Kirkland Lake was not disturbed. In effect, therefore, the restrictions affected the "open" Class "C" licences and several Class "D" operators.

With the passage of time exceptions were made. Successful applications were made to the regulatory Board by Grant's Transport of New Liskeard and by many others. Star Transfer has provided this Committee with a list of forty-three carriers domiciled in Southern Ontario in various classifications who are said to be operating north of North Bay. There is still a substantial number of restricted licences.

In the meanwhile, the shippers of lumber in Northern Ontario have alleged a shortage of carrying capacity. We have also heard from a carrier who is anxious to remove the North Bay restriction so that goods made in Huntsville can be delivered throughout the entire Province whether north or south of North Bay. The Committee feels that the situation in 1976 is sufficiently important to reconsider the policy which has been in effect for nearly forty years in respect of this restriction.

The Committee therefore recommended:

That the division of Ontario at North Bay for the purpose of The Public Commercial Vehicles Act be varied to accord with current conditions. All licensees now restricted as outlined above should be allowed to apply for the removal thereof. The Transport Board should select a date at which all such applications will be consolidated and heard together. The interested shipper or receiver

of goods moving north and south of North Bay may appear at the hearing of such applications and support all or some of the applicants. Announcements of the hearings should be given wide publicity in all of the media in northeastern Ontario.

In the event that applications to the Board are successful, the shippers of lumber and lumber products may have available additional vehicles which can be used for southbound shipments. Licensing regulations should be enforced here as elsewhere. The present Class A carrier may allege that additional competition will adversely affect northbound shippers. On balance, however, we feel that the public interest will be served best by removal of the so-called North Bay restriction.

The Ontario Highway Transport Board should review the service by "A" carriers north of North Bay to ensure that the principles of competition, public necessity and convenience are being met.

The Committee received submissions subsequent to the Interim Report, criticizing these recommendations. After careful consideration, the Committee confirms its initial position.

### 3.4 Rationalization of the System

#### 3.4.1 The Principle

The Committee supports the principle of licence classification and wishes to simplify the nature and types of terms, conditions and restrictions in the licences. In the absence of the latter, any apparent simplification of classification would be meaningless.

The problems of licence interpretation caused by the present system are particularly acute in general freight transport. Given the delicate balance which exists between A, C and D class carriers - including consideration of the capital investment of many Class A carriers in terminals and equipment far in excess of that normally required of C and D carriers,

it would be folly to take hasty action on the classification system.

Looking at the entire range of classifications, the need to proceed slowly is apparent. This is true because the principle of exclusiveness seems to beg specific classifications.

If the system were to classify only common and contract carriers, exclusiveness is lost. As well, given the balances within the industry, the Committee expects that through the hearing process, firm lines would be quickly drawn between types of common carriers. It would not be long before those former A carriers wanted and needed special recognition. Ontario would soon have truckload common carriers and less-than-truckload common carriers. It is more appropriate to retain the current A and C classifications and reduce the complexity of the system by streamlining the language of licences and the application of conditions.

Given existing adversary hearing procedures, the task of ascertaining whether or not licences can be simplified must be done first.

The Interim Report recommended at page 66 that:

A program of rewriting operating licences should be assigned to a specific bureau or division of the Ontario Highway Transport Board with instructions to simplify each authority in terms of (a) routes (b) commodities (c) shippers (d) equipment. Duplication is to be avoided. Clarity is essential. It is expected that this program will take a considerable length of time.

The plan to be adopted for the future should have regard to (a) the method used by the Ministry of Transportation and Communications in licensing buses under The Public Vehicles Act , (b) the style used in the Province of Quebec, (c) the pattern adopted by (i) the other Provinces of Canada and (ii) the Interstate Commerce Commission. Uniformity is desirable, although not essential. We have difficulty in understanding the existing practices of (i) duplication of intra and extra provincial licences, (ii) provisos relating to licensing in other jurisdictions and (iii) unduly restricting unimportant transfers of shares in corporate licences.

### 3.4.2 Trip Leasing

The Interim Report established the principle that in certain situations there may be value in permitting a trip lease between two licensed carriers for a vehicle and driver. As stated on page 40:

It is beneficial to the shipper who has goods to move, as it increases available trucks licensed to haul those commodities; it provides a "backhaul" for the operator who has carried the commodities to the current point; it provides revenue for the two licensed carriers who make the arrangement.

The Committee therefore recommended:

- (4) that trip leasing be permissible where the lease, arrangement or agreement is between a truck owner who is a licensed carrier and another licensed carrier whether or not the owner has control of the vehicle and/or the driver provided that:
  - (i) the fronthaul of the lessor was in accordance with his operating authority;
  - (ii) the backhaul or lease haul is in the general reverse direction of the fronthaul;
  - (iii) the lessee licensed carrier shall assume all responsibility for the move as if the truck were owned;
  - (iv) the lessee licensed carrier shall report the transaction to the Ontario Highway Transport Board.

This recommendation was born out of a concern about the rigidities in the current licensing process. These rigidities decrease a carrier's flexibility and in some cases can decrease levels of service to the shipping public. An empty run occasioned by the licensing system has adverse impacts on energy use, traffic and the highway infrastructure. Whether these effects are small or large in the aggregate is unknown.

The Committee assumes that operating authority is a privilege granted by the Crown. It is not a vested right in Ontario. It therefore



cannot be leased. The Committee's recommendation deals with a lease of a vehicle (and driver) from one licensed carrier to another.

The proposal would increase the flexibility of any two participating carriers, and in some cases result in faster, more efficient service to the public. One carrier could not erode another's business because the two must consent to the transaction. As well, both must be licensed.

The Committee's discussion on energy reflects the opinion often expressed that a potentially large proportion of "empty movements" are unavoidable because of vehicle, load and service specialization.

However, the Committee does not agree with the testimony of one industry association that it would be:

...loath to see the institution of such a profound change in licensing and traffic patterns which have evolved around the present form of licensing unless licence limitations are a real contributing factor to the empty backhaul problem.<sup>10</sup>

The Committee's concern is more broadly based and lies with the relative inflexibility of licensing. The system must be responsive to changing needs. Flexibility in the authority is preferable to the alternatives of a shipper suffering slower or more costly service or of a carrier breaking the law to carry a load for which he does not have authority.

The system must not be too rigid. This proposal would provide flexibility only where it is needed, wanted and useful.

### 3.4.3 Interchange of Loads and Trailers -C Carriers

Readers are reminded of the Interim Report's comments and recommendations on page 55 that ;

the regulations affecting truckload or Class "C" for-hire carriers under The Public Commercial Vehicles Act be amended to permit interchange of trailers and transfer of loads within the terms of their operating authorities. To this end we recommend the deletion of a restriction in Regulation 700 of Section 2(2)(b)(vi)a, which reads as follows:

where the terms of the operating licence authorize the transfer of goods, or interchange of trailers, and ...

Heretofore a Class "C" carrier was authorized to effect the transfer of goods or interchange of trailers by a person who is the holder of an operating licence or who is the holder of an operating licence that includes the terms of a Class "C" operating licence,

- a. where the terms of the operating licence authorize the transfer of goods or interchange of trailers, and
- b. if the goods transferred or the trailers interchanged are transported within the Class "C" authority of the person to whom the goods are transported or the trailer interchanged."

In effect, the proposed amendment - by deleting Clause (a) above - will remove the prohibition against the transfer of goods or interchange of trailers between Class "C" carriers who are otherwise authorized to perform the transportation service.

### 3.5 Recommendations - Principles of the Licensing Process

The Committee recommends that:

1. The current licence classification system be retained;
2. The Ministry of Transportation and Communications in conjunction with the Ontario Highway Transport Board and industry review and report to the government on ways and means to simplify the description of authorities and the terms, conditions and restrictions in licences;

3.5 (Continued)

- 2a. The Ministry of Transportation and Communications in conjunction with the Ontario Highway Transport Board and industry then apply the principles of simplification to the classification system with a view towards "declassifying" the licensing process, particularly as it relates to common carriage of general freight;
3. The Ontario Highway Transport Board put emphasis on naming places in licences;
4. The inconsistency in the regulations between the definition of a Class A carrier and the form of a Class A licence be removed;
5. Existing operating licences containing erroneous highway numbers be corrected by the Ontario Highway Transport Board to clarify the authority of the licence;
6. The Ontario Highway Transport Board minimize references to commodities in operating authority descriptions, except in cases where special equipment or handling is needed to transport the commodity efficiently and safely;
7. The Ontario Highway Transport Board not limit a carrier's ability to expand by imposing unnecessary restrictions on fleet size or capacity;
8. Exclusive of K, H, T and R licences, the Board reference particular vehicle types in authority descriptions where it will facilitate enforcement;
9. Statistics be produced to indicate the number of licences of each class and the number of privileges held by each class of licence and the number of separate firms which hold those licences and privileges;
10. The Ontario Highway Transport Board in granting any extension or making any other change to a licence, incorporate the change into the description of the authority to designate the authority by commodity, by place, by route or by some other recognizable item within the licence;
11. A program of rewriting operating licences be assigned to the Ontario Highway Transport Board with instructions to simplify each authority in keeping with the findings obtained through the implementation of recommendations 2 and 2a above;

3.5 Continued

12. A licensed carrier be specifically permitted in law or by policy, as the case requires, to lease a vehicle and a driver from another licensed carrier for a single trip which is authorized in the former carrier's operating authority provided that the vehicle has a vehicle licence in accordance with the Act and
  - (i) the front-haul of the lessor is in accordance with his operating authority;
  - (ii) the backhaul or leasehaul is in the general reverse direction of the fronthaul;
  - (iii) the lessee licensed carrier shall assume all responsibility for the move as if the truck were owned;
  - (iv) the lessee licensed carrier obtains from a member of the Ontario Highway Transport Board verbal, written or telegram authority to enter into such an arrangement.
- 12a. The Ontario Highway Transport Board review any and all such approvals of trip leasing arrangements between licensed carriers to ensure that their use is not on a continuing basis;
13. The word "rights" be replaced by the proper word "privileges" in The Public Commercial Vehicles Act to describe that which is conveyed to the recipient of a Public Commercial Vehicle Operating licence;
14. The Ontario Highway Transport Board publish as soon as possible a complete directory of licences and trucking services;
15. The division of Ontario at North Bay for the purposes of The Public Commercial Vehicles Act be varied to accord with current conditions. All licensees now restricted be allowed to apply for the removal thereof. The Ontario Highway Transport Board select a date at which all such applications will be consolidated and heard together. The interested shippers or receivers of goods moving north and south of North Bay may appear at the hearing of such applications and support all or some of the applicants. Announcements of the hearings be given wide publicity in all of the media in northeastern Ontario;



16. Licensing regulations should be enforced with respect to the movement of lumber from and to the northeastern part of Ontario;
17. The Ontario Highway Transport Board should review the service by "A" carriers north of North Bay to ensure that the principles of competition and public necessity and convenience are being met.
18. The regulations affecting truckload or Class "C" for-hire carriers under The Public Commercial Vehicles Act be amended to permit interchange of trailers and transfer of loads within the terms of their operating authorities. A restriction in Regulation 700 of Section 2(2)(b)(vi)a, which reads as follows:

Where the terms of the operating licence authorize the transfer of goods, or interchange of trailers, and...

be deleted.

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## CHAPTER 4

### PRIVATE CARRIAGE

There was very little testimony before the Committee on private carriage. It is difficult to define the extent to which the private carriage of goods has changed over the years. There is a widespread opinion that private carriage has been growing rapidly.

In an attempt to measure this growth, the Committee depended on two surveys. The first was commissioned by the Ministry of Transportation and Communications in 1971. The survey did not include piggyback movements, consequently the total for-hire sector is underestimated. The second survey, the results of which were used to determine the relative growth, was done by the Ministry of Transportation and Communications in 1975.

Initially, the concept of private trucking is examined.

#### 4.1 The Implications of Private Trucking

Private trucking is generally thought of as an ancillary part of a manufacturing or production process. Private carriage is necessary - it makes certain manufacturing and distribution processes more efficient. That is the good side; the contradictory side, is that private trucking as a means of transportation is less efficient in some respects than for-hire transportation.

Inefficiencies in the production-distribution system may occur

because:

some shippers are unable to calculate the actual costs of their private trucking operation, and they may run the risk of adopting a more costly alternative...

As long as private trucking hauls freight for short haul for which it has an inherent cost advantage, there is less inefficiency involved. It is felt (by some) that a substantial misallocation of resources occurs when private carriage engages in long haul shipments because these can be conducted more efficiently by common carriers. The combination of the low percentage of full load round trips, the high incidence of empty returns and the low average loads, limits the use of the highway system. The Ministry of Transportation and Communications' survey revealed that private carriers have a large number of trucks and tractors<sup>1</sup> hauling fewer tons of merchandise than common carriers do.

#### 4.2 The Foreign Experience

The growth of private trucking was a concern of the foreign jurisdictions visited by the Committee. Private transportation grew in Belgium after 1960 and private continues to contribute more than eight times the number of vehicles and almost twice the number of tons carried by for-hire firms.

The European Economic Community reported that as the total number of commercial vehicles has grown by 43% from 1962 to 1971, the number of vehicles used privately is far higher than the number used for-hire. However, the proportionate difference in terms of capacity is much smaller - Germany has four times as many vehicles engaged in private than for-hire carriage, but capacity of the vehicles is only 1.5 times that of the for-hire industry; for France the proportions are 12 and 3; and for Belgium the proportions are 8 and 2.3.



Germany was so concerned about private transportation that a discriminatory tax was levied against own-account operations. This tax was lifted in 1972 because it offended the principles of European Economic Community rules.

The Germans do not consider the growth to be based totally on costs for the entrepreneur, but rather on other corporate decisions such as advertising for the producer and an interest in the total system of production and distribution.

Since 1970, private carriage in Germany has increased by 12%, professional for-hire by 4%. Private truck operations are subject to certain restrictions. They are not allowed to transport goods owned by others; they are subject to licensing requirements. Private trucking was described as the government's "open flank". The Federal Institute for Long Distance Hauling believes that private trucking is a waste for the entire economy.

The anomaly is Great Britain, where the proportion of freight carried by private carriage relative to for-hire has been declining recently. Private carriage hauled 706 million tons in 1974, 909 million tons in 1967. Professional transport hauled 831 million tons in 1974, 772 million tons in 1967. Private carriage has increased from 30% to only 32%, while the for-hire segment's share has increased from 44% to 57%.

In the Committee's opinion, the shippers and the unions hold the lion's share of power in the for-hire transportation market in England and therefore play a dominant role in the rate and service characteristics of for-hire carriage. This has apparently contributed to the relative decline in the rate of growth in private transport.

#### 4.3 The 1971 Survey<sup>2</sup>

The Ministry of Transportation and Communications reported that in 1971, of all freight movements by highway in Ontario, 37.1% was by private carrier, 58.6% was by common carrier and 4.3% by contract carrier.\* A breakdown of the types of commodities carried is given in Table 1.

The 1971 survey yielded some useful information. The results of that study are presented in Tables 2, 3, 4 and 5; they should be examined with caution, however, as they cover only a limited sample. In addition, the survey was not designed to deal exclusively with private carriage.

#### 4.4 The 1975 Survey<sup>3</sup>

In 1975, the Ministry of Transportation and Communications conducted a commercial truck survey. The results of the survey have been published and, despite the acknowledged limitations of the data, the results provide additional useful information.

Table 6 following presents some of the key statistics from this survey.

\* Contract - carriers who do not purport to transport for the public generally, but carry for a very limited clientele under special contracts which usually cover shipments over a period of time.  
(Locklien: Economics of Transportation)

TABLE 1

DISTRIBUTION OF TONNAGE BY TYPE OF CARRIER<sup>1</sup>

(Percent)

	<u>Common</u>	<u>Contract</u>	<u>Total For-Hire</u>	<u>Private</u>	<u>Total All Carrier</u>
Building Materials					
- Metal	73.7	1.6	75.3	24.7	100.0
- Wood	44.9	12.6	57.5	42.5	100.0
- Cement	62.5	2.3	64.8	35.2	100.0
- Other	56.1	1.2	57.3	42.7	100.0
Machinery					
- Agricultural	60.1	-	60.1	39.9	100.0
- Other	51.4	2.2	53.6	46.4	100.0
Vehicles					
- Automotive	76.1	7.4	83.5	16.5	100.0
- Other	51.6	5.3	56.9	43.1	100.0
Chemicals					
- Petroleum	27.8	3.8	31.6	68.4	100.0
- Other	66.0	2.3	68.3	31.7	100.0
Manufacturers					
- Furniture	73.1	6.3	79.4	20.6	100.0
- Hardware	72.8	1.7	74.5	25.5	100.0
- Paper	81.3	3.3	84.6	15.4	100.0
- Packaged Material	67.6	6.5	74.0	26.0	100.0
- Other	66.1	5.8	71.9	28.1	100.0
Agricultural Products					
- Field	44.7	9.6	54.3	45.7	100.0
- Fruit & Vegetables	35.5	-	35.5	64.5	100.0
Foodstuff					
- Refrigerated	59.7	3.2	62.9	37.1	100.0
- Prepared	73.9	3.8	77.8	22.2	100.0
Animal	60.8	-	60.8	39.2	100.0
Mine	85.2	2.2	87.5	12.5	100.0
Scrap	41.5	0.5	42.0	58.0	100.0
Pulpwood etc.	20.5	8.7	29.2	70.8	100.0
All Other	<u>65.8</u>	<u>5.3</u>	<u>71.1</u>	<u>28.9</u>	<u>100.0</u>
	58.6	4.3	62.9	37.1	100.0

1. An Appraisal of the Potential Impact to Ontario from the Implementation of Part III of the National Transportation Act, Volume II, Prepared by The M.W. Menzies Group Limited for The Ministry of Transportation & Communications 1972.

TABLE 2

AVERAGE LENGTH OF HAUL

		<u>Average Length of Haul</u>	<u>Over All Average</u>
<u>FOR-HIRE CARRIERS</u>	1-300 miles	168 miles	
	301-1000 miles	501 "	640 miles
	1001 and over	1769 "	

Freight hauled for less than 300 miles 33%

Freight hauled from 301-1000 miles 47%

Freight hauled for 1001 miles and over 20%

		<u>Average Length of Haul</u>	<u>Over All Average</u>
<u>PRIVATE CARRIERS</u>	1-300 miles	149 miles	
	301-1000 miles	473 "	449 miles
	1001 and over	1700 "	

Freight hauled for less than 300 miles 49%

Freight hauled from 301-1000 miles 40%

Freight hauled for 1001 miles and over 11%

Source: M.T.C. 1971 Trucking Survey.



TABLE 3

DISTRIBUTION OF TONNAGE BY CLASS OF CARRIER					
(000 tons)					
	<u>Common</u>	<u>Contract</u>	<u>For-hire</u>	<u>Private</u>	<u>Total</u>
Building Materials					
- Metal	6,399	137	6,536	2,146	8,682
- Wood	3,054	861	3,915	2,893	6,808
- Cement	2,160	80	2,240	1,219	3,459
- Other	3,483	75	3,558	2,651	6,209
Machinery					
- Agricultural	211	-	211	140	351
- Other	3,085	131	3,216	2,783	5,999
Vehicles					
- Automotive	1,671	162	1,833	362	2,195
- Other	1,403	143	1,546	1,172	2,718
Chemicals					
- Petroleum	1,651	223	1,874	4,062	5,936
- Other	5,533	194	5,727	2,657	8,384
Manufacturers					
- Furniture	887	77	964	250	1,214
- Hardware	570	13	583	200	783
- Paper	4,383	180	4,563	828	5,391
- Packaged Material	837	80	917	322	1,239
- Other	2,548	223	2,771	1,085	3,856
Agricultural Products					
- Field	611	132	743	625	1,368
- Fruit & Vegetables	491	-	491	891	1,382
Foodstuff					
- Refrigerated	2,277	123	2,400*	1,415	3,815
- Prepared	5,176	267	5,443	1,557	7,000
Animal	944	-	944	609	1,553
Mine	3,703	97	3,800	544	4,344
Scrap	338	4	342	473	815
Pulpwood etc.	1,612	682	2,294	5,558	7,852
All Other	<u>4,205</u>	<u>338</u>	<u>4,543</u>	<u>1,848</u>	<u>6,391</u>
	57,232	4,222	61,454	36,290	97,744

\* 1,194 is overhead for-hire. (Neither originating in or destined to Ontario, i.e., through traffic).

Source: M.T.C. 1971 Trucking Survey

TABLE 4

DISTRIBUTION OF TONNAGE BY  
CLASS OF CARRIAGE -PRIVATE CARRIERS

(000 tons)					
<u>To Or From</u>	<u>Origin Ontario</u>	<u>Destination Ontario</u>	<u>Total</u>	<u>% of Private</u>	<u>% of All Ont Tons</u>
Extraprovincial					
Newfoundland	7	-	7	*	11.7
Prince Edward Island	3	-	3	*	23.1
Nova Scotia	20	39	59	0.2	25.5
New Brunswick	5	4	9	*	2.5
Atlantic Provinces	35	43	78	0.2	11.8
Quebec	2,228	3,180	5,408	14.9	36.7
Manitoba	654	674	1,328	3.7	34.6
Saskatchewan	65	138	203	0.5	48.8
Alberta	163	119	282	0.8	27.2
Prairie Provinces	882	931	1,813	5.0	34.2
British Columbia	117	72	189	0.5	32.8
CANADA	3,262	4,226	7,488	20.6	35.2
UNITED STATES	504	634	1,138	3.1	35.4
Total Extra Provincial	3,766	4,860	8,626	23.7	35.2
Intra Ontario	-	-	25,465	70.2	39.1
Total Ontario (Origin & Destination)	-	-	34,091	93.9	38.0
Overhead	-	-	2,199	6.1	27.0
GRAND TOTAL	-	-	36,290	100.0	37.0

\* Less than 0.05%.

Source: M.T.C. 1971 Trucking Survey

TABLE 5

DISTRIBUTION OF TONNAGE BY CLASS  
OF CARRIAGE - FOR-HIRE CARRIERS

(Common & Contract) (1,000 tons)

<u>Or From</u>	<u>Origin Ontario</u>	<u>Destination Ontario</u>	<u>Total</u>	<u>% of For Hire</u>	<u>% of All Ont. Tons</u>
Interprovincial					
Newfoundland	36	17	53	0.1	88.3
Prince Edward Island	10	-	10	*	76.9
Nova Scotia	72	100	172	0.3	74.5
New Brunswick	113	237	350	0.5	97.5
Atlantic Provinces	231	354	585	0.9	88.2
Quebec	3,810	5,540	9,350	15.2	63.3
Manitoba	1,232	1,281	2,513	4.1	65.4
Saskatchewan	77	136	213	0.4	51.2
Alberta	505	251	756	1.2	72.8
Prairie Provinces	1,814	1,668	3,482	5.7	65.8
British Columbia	276	111	387	0.6	67.2
CANADA	6,131	7,673	13,804	22.4	64.8
UNITED STATES	865	1,210	2,075	3.4	64.6
Total Extra Provincial	6,996	8,883	15,879	25.8	64.8
Within Ontario	-	-	39,625	64.5	60.9
Total Ontario	-	-	55,504	90.3	62.0
(Origin & Destination)					
Overhead	-	-	5,950	9.7	73.0
GRAND TOTAL	-	-	61,454	100.0	62.9

Less than 0.05%.

Source: M.T.C. 1971 Trucking Survey

TABLE 6

CHARACTERISTICS OF PRIVATE CARRIAGE

1. Class of carriage	for-hire 57%, private 43%		
2. Truck body type	van 39%, flat 19%, dump 16%, other 26%		
3. Median tare weight	26,210 lbs.		
4. Median gross weight	72,300 lbs.		
5. Median distance shipped	138 miles		
6. Origin destination	intra-provincial	67%	
	extra-provincial	33%	
	Intra-provincial	main generating centres - Toronto and Hamilton	
	Extra-provincial	Quebec	50%
		U.S.A.	30%
		Other	20%
7. Base province/country and place of registration	<u>Based in</u>		<u>Registered in</u>
	Ontario	84%	89%
	Quebec	8%	18%
	U.S.A.	5%	10%
8. Main commodities shipped	Construction	19%	
	Metals	16%	
	Forest	11%	
	Non-perishable foods	9%	
	Perishable foods	7%	

Source - MTC 1975 Commercial Vehicle Survey



It is important to note that the 1975 survey was designed to examine the relevance of the Ontario Bridge Formula weights. The exclusion of empty trucks from the sample may lead to an overestimation of the median gross and shipments weights. The probable under representation of truck traffic on secondary and tertiary highways may result in underestimation of the percentage of intra-provincial truck traffic and overestimation of the median gross weights and distances shipped. The results are based on interviews with the drivers of 9,250 vehicles during the months of March to August 1975 at 44 truck inspection stations. The interviews did not include every driver of a loaded truck, and night and weekend traffic was excluded.

Despite the shortcomings acknowledged in the report, it stated that "in spite of these limitations, high confidence can be placed on the survey result with regard to the relative shares of for-hire and private trucks on the road since none of the limitations is likely to affect the aggregate percentages significantly."<sup>4</sup>

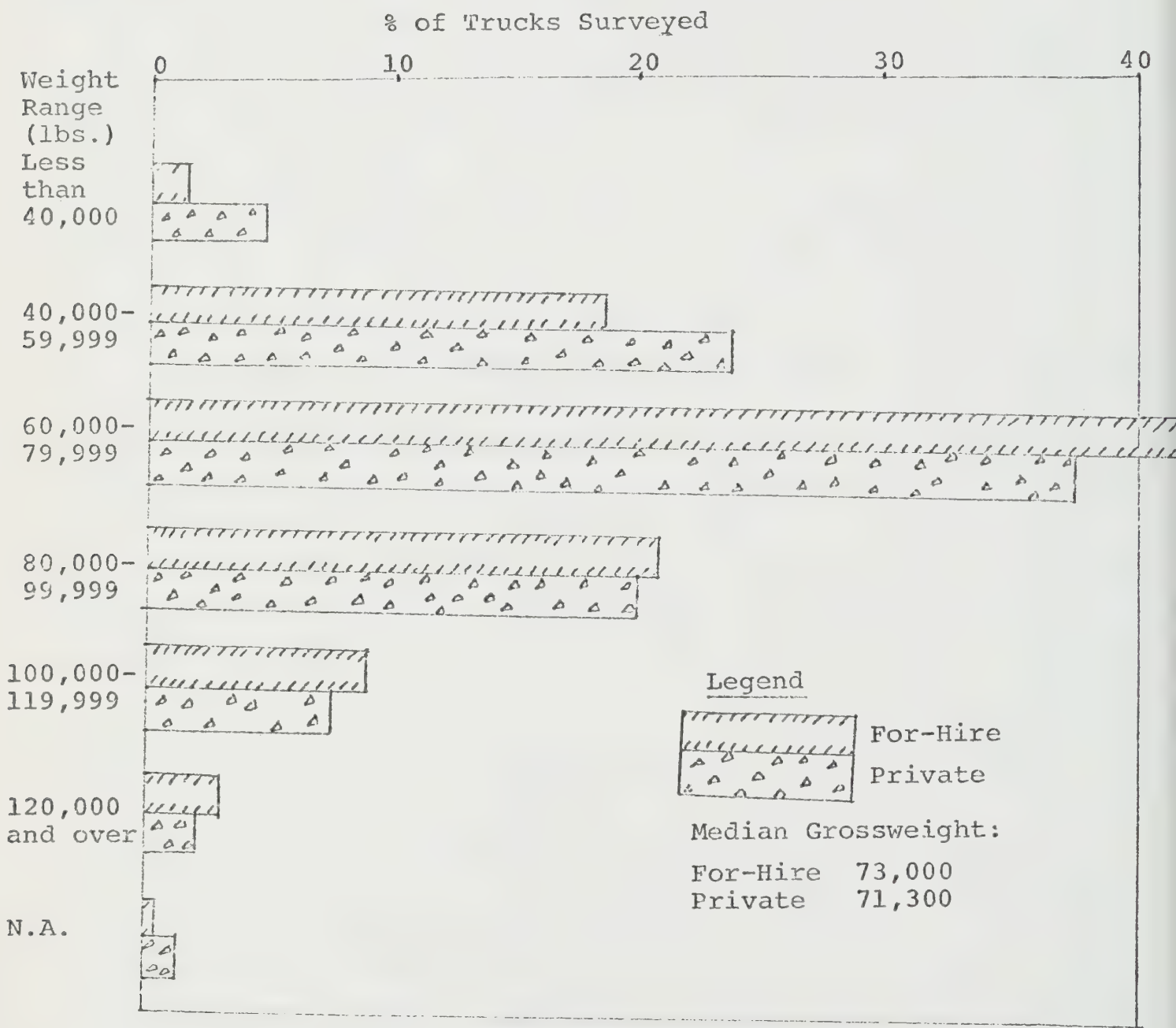
The study's findings on private transportation are directly relevant to this chapter. Of the 9,250 vehicles surveyed, 57% were for-hire, 43% were private.

Figure 1 following is taken from the report.

It can be seen that the median gross weight of for-hire trucks was only slightly above that of private trucks. This was a somewhat unexpected result, as the general impression had been that private carriage usually carried lighter loads. To the extent that the exclusion of empty movements biases the median weights downwards, particularly for private carriage, the apparent conclusion may not accurately reflect the situation.

FIGURE 1

Distribution of Truck Traffic by Grossweight  
and by Class of Carriage



Source - 1975 MTC Commercial Vehicle Survey

In Germany, for example, for-hire long distance transport utilizes on average about 55% of capacity, private between 35% and 50%. The Germans also stated that for-hire vehicle average load weight is 22 tons, while private vehicle average load weight is approximately 9-10 tons.

The work done for the Ministry in 1971/72 showed that 37.1% of all freight movement by highway was by private carrier, while 58.6% was for-hire and 4.3% by contract carrier. This is consistent with the results of the 1975 survey.

If one calculates the median weight of private and for-hire vehicles surveyed in 1975 and multiplies it by the number of private and for-hire vehicles, one concludes that private transport carried 42.5% of the total freight surveyed while for-hire carried 57.5% of that total. This implies a decrease in the percentage of freight carried by common and contract for-hire carriers from 1971 to 1975 from 62.9% to 57.5%

In the 1975 survey, more private trucks than for-hire were found carrying metals, petroleum products, forest products, mobile homes and trailers. For-hire vehicles outnumbered private vehicles noticeably in the carriage of autos and trucks, auto parts, tires, dry bulk chemicals and minerals, construction materials and less than truckload traffic.

While these results cannot be compared directly to the results of the 1971 survey, private transport then accounted for more tonnage than for-hire transport in the carriage of petroleum, scrap metal and pulpwood. Distribution by percentage of tonnages for all other commodities transported favoured for-hire transport.

Therefore, it appears that private transport has gained 5.4% of tonnage in those years, but not with regard to the carriage of any one identifiable commodity. This growth appears to be fairly general.

To indicate this, some areas of relative growth and loss are shown in the following table.

TABLE 7

GROWTH OF PRIVATE TRUCKING

COMMODITY	1971		1975	
	FOR HIRE	PRIVATE	FOR HIRE	PRIVATE
	%	%	%	%
Machinery	53.8	46.2	50.9	49.1
Manufactures	78.5	21.5	79.3	20.7
Construction Material	64.6	35.4	63.7	36.3
Animals	60.8	39.2	63.1	36.9

Source - MTC Studies previously noted



#### 4.5 Growth in private trucking

The Ministry of Transportation and Communications has stated:

Private carriage can become a favourable alternative for the management of many companies when specific service or cost considerations are very important. Some shippers have particular needs for handling their freight; for example, the need for special accessories in loading and unloading, which cannot be satisfied by common carriers. Other reasons often mentioned by shippers regarding common carrier service were the following:

- the speed of movement and delivery was not satisfactory
- the protection from damage or loss was not satisfactory, and
- the need to service many shipping points with multiple delivery requirements was not met by common carriers.

With private carriage a firm has the capability to meet these requirements and provide better service with regard to flexibility of routes, scheduling, speed of moving freight and better protection from loss and damage, etc.

Furthermore, firms with certain characteristics may find private trucking to be more economical. Some of the characteristics (of such firms) are:

- the firm has a large volume of shipments
- the freight moves in truckload shipments
- the freight is homogeneous in nature
- the merchandise requires special handling, and
- the firm can achieve two-way hauls

In general, a shipper with many shipping points that require many short hauls seems to be the typical private carrier. There is also evidence indicating that the incidence of private trucking increases with the size of the shipper. Medium to large size companies having more shipping points and a higher proportion of small hauls are the heaviest users of private carriage.

For many shippers the choice between common and private carriage represents a dilemma. On the one hand, there may be the opportunity to reduce expenses and/or to get better service by hauling their own products. On the other hand, they realize that the service that common carriers provide may deteriorate because of the growth of private carriage. If private carriage hauls high value freight, and there is evidence that this is the case, then common carriers could experience revenue losses which may lead to higher average rates. For example, the same shippers which benefit from private trucking could pay higher rates for their inbound shipments which are hauled by common carriers. Furthermore, these shippers have to take into consideration some other costs associated with private trucking. The hauling of goods by private

4.5 (continued)

fleet imposes an additional administrative burden on the firm's management. The personnel in the traffic department may not have the expertise to handle some of the new tasks. The lack of expertise can lead to inefficiencies in their private truck operations.

Shippers must consider the heavy capital requirement<sup>5</sup> that private carriage involves and decisions have to be made about equipment financing and equipment maintenance. In some cases, the firm leases the equipment for its private fleet, but even leasing involves future commitment for the firm.

In some cases, private carriers switch back to for-hire carriers when fleet maintenance costs become real and known. This can occur for the first time in the period from two to four years from the purchase of power units when, generally, those units will require significant maintenance.

In addition to objective reasons for choosing private truck over common carrier, some shippers consider other advantages such as the benefits derived from:

- advertising
- total control over the distribution system
- total integration of production, distribution and warehousing systems
- control or influence over common carriers to provide total services at lower rates than would be the case if the shipper had no private transportation alternative.

To support these comments, an official of one company engaged in private trucking stated to the Committee:

The underlying principle which prompted the company into private trucking was not a desire for a direct competition with transport industry but the need for security during labour problems and/or a safeguard against exorbitant level of rates.<sup>6</sup>

One Association official commented to the Committee:

Private carriage provides the competitive force to achieve the lowest price in our end products. Private carriage can be described as an extension of the fundamental business practices of free Canadian enterprise,<sup>7</sup> and is only one segment of industry's total distribution concept.

The representative of one large association of manufacturers/shippers reported that:

"61% of our Ontario members utilize some form of private carriage."<sup>8</sup>

For a variety of reasons then private trucking provides a large capacity in Ontario.

#### 4.6 Characteristics of Private Trucking

One survey showed that:

Approximately 80% of the shippers surveyed rely on one or two modes to meet their total transportation demand. Some of the characteristics of those shippers who used private truck are:

1. Private trucks appear to be used by a higher percentage of shippers in Northwestern Ontario than in other regions of the province.
2. Intensive users (over 50% of products or inputs) were found more frequently in Northwestern Ontario.
3. Large cities show a higher proportion of shippers who make some use of private truck than do medium and small cities.
4. Intensive use of private trucks (more than 50% of outgoing traffic) appears to be more prevalent in medium and small cities.
5. Relatively, more smaller firms employ private truck to move their goods than large firms.
6. The percentage of shippers using private truck within each distance range decreases as distance increases. On balance, shippers who ship within 100 miles showed a tendency to employ this mode.
7. Private truck is used by a relatively high percentage of shippers in the "food and beverage" and the "wood, lumber, paper" industry groups.<sup>9</sup>

Much of the information from this survey of shippers was confirmed by the 1975 commercial truck survey. A higher percentage of private trucks travelled less than 100 miles than did for-hire trucks. The median distance of private trucks was 25 miles less than that for for-hire trucks.

The 1975 survey revealed further interesting facts about private in comparison to for-hire transportation. Between Ontario and the U.S.A., 55% of the number of trucks surveyed were for-hire and 45% were private. Between Ontario and Quebec, the comparative percentages were 49% and 51%. More private trucks are found in this corridor than in any other extra-provincial transportation corridor. Between Ontario and the Atlantic provinces relative shares were 71% and 29%, between Ontario and the prairies, they were 78% and 22% and for moves within Ontario they were 59% and 41%.<sup>10</sup>

This seems to be consistent with earlier findings regarding the types of commodities most likely to be shipped by private truck. For example, private carriers' share is highest in the Ontario-Quebec corridor and in that corridor, significantly more trucks were carrying metals than other types of commodities.

Many of these characteristics are common to private truck operations in Europe. For example, in Germany, private trucks travel an average distance of 198 kilometers while for-hire vehicles average 287 kilometers.

Private vehicles increased in number over the period 1971 to 1975 in Belgium, but in terms of tonnage carried, the rate of increase was less, 12.24% over the period. For-hire tonnage increased by 27.12% over the same period at a more stable rate. The greater volume was



carried by the private segment which carried 784,305,000 tons in comparison to the 414,332,000 tons carried by for-hire carriers.

This trend is different in Great Britain where the share of tons transported by private has decreased from 54.1% in 1967 to 45.9% in 1973. The for-hire shares in those two years were 45.9% in 1967 and 54.1% in 1973. It is important to note that the total tonnage reported to have been carried by truck decreased from 1967 to 1973.

#### 4.7 Conclusions

##### 4.7.1 Market Shares

From the information reviewed, it can be concluded that inter-city private truck transportation in Ontario has over recent years grown in relation to for-hire transportation. To the extent that for-hire accounts for 59% of traffic within Ontario and 57% of all Ontario traffic in terms of vehicle numbers, the apparent trend is not a concern from a transportation point of view. To the extent that for-hire's share of capacity is likely greater than 57%, it retains a significant share of the total market. That share appears to be sufficient to allow enough firms to remain profitable and ensure that service is provided on a stable basis to those who need it.

The similarity of the Ontario statistics with those of other jurisdictions implies that factors beyond the control of the government and the for-hire industry have contributed significantly to the integration by producers and manufacturers into private trucking. In other words, regardless of the structure of the for-hire industry, created in part by government regulation, shippers will move to private truck transportation

if it is in their best interest.

Private transportation has benefits, both real and perceived. This is equally true in the case of private automobiles. Regardless of what is done to dissuade people from the private car to public transportation, there will continue to be those who prefer the private car and who are prepared to pay its extra price.

The joint responsibility of industry and government must be to foster a public alternative to private transportation which is as efficient, effective and viable as possible. The choice to use it will remain a private decision. If costs are attractive, service is of consistently high quality and this is made known to potential users, people will choose the public alternative for rational reasons.

As paraphrased from the Interim Report on page 36,

The decision to become involved in private transportation is a right. The physical activity of operation on the public highway is a privilege which will always be afforded as long as the operations are responsible and in accordance with the laws of the Province respecting vehicle operations generally. The decision is a business decision and one which this Committee would not wish to disturb.

The goods transportation market will continue to be shared by private and for-hire services. The relative shares of each will be determined only in part by its efficiency as a transportation means. Shares will be determined to a greater degree by other factors involving broad corporate and marketing decisions by producers and manufacturers. If the for-hire transportation industry remains viable and continues to improve its service, then the market shares of private and for-hire should stabilize.

A similar phenomenon occurred after the fast growth period of for-hire truck transportation relative to rail. As the benefits of the truck mode became known and available to more shippers, truck transportation grew. But it did not nor will it ever take the entire market. Truck and rail each have their own advantages one over the other, as do private and for-hire carriage. The levels and types of service will rightly establish themselves based on the real advantages of one compared with the other.

#### 4.7.2 Public Commercial Vehicle Fees

Several specific issues with regard to private trucking became apparent in the hearings. It is the Government's responsibility to foster an environment in which the inherent benefits of transportation modes under its jurisdiction can be effectively realized by the suppliers and users of transportation services. To achieve this, government(s) must be careful not to distort the competitiveness of any one mode.

Overall government policy must look at transportation as one segment of the economic process. The availability of transportation is vital to that process, but it is only one part. It is within this broad context that transportation services must initially be examined. One must examine the production process as a whole; one then must become specific and assess transportation as an end in itself in setting rational policy.

There will always be cost differences between the private and for-hire carrier in a particular case. These arise from market factors.

Government policy should not distort unnecessarily the natural cost structure of one mode in relation to any other by the imposition of unequal taxation. As stated, a government should attempt to create environments where the suppliers of each type of transportation service can optimize their own service.

Ontario's current policy in this area has not been justified to the Committee. Certain taxes are now imposed on the for-hire industry which do not apply to private carriers. This increases the cost of for-hire carriers in a way which has no basis in the nature of the comparative operations. The taxes therefore distort the marketplace.

This Committee is not the first to remark on the disparities created by the imposition of a special tax on for-hire carriers. The following statements have been made to the Ontario Government:

1. Report of the Royal Commission on Transportation, Province of Ontario, 1938, p.14

Unfair Results of the Present P.C.V. Licence System

The Commission is convinced that the complaints of the public commercial vehicle operators, and particularly of those with Class "A" licences, that they should not be charged fees very much in excess of those paid by private carriers is justified. Moreover, the great disparity between the fees required of public commercial vehicles and of freight vehicles not operating for-hire places the public commercial vehicle operators under the constant fear of losing their business through the customer placing his own trucks on the road, for which he would pay lower licence fees. Further, the obligation of common carriers to provide service offsets to a very large extent the value of the special privileges that they may enjoy.



2. Report of the Select Committee on Toll Roads and Highway Financing, 1957, p.38:

The Committee recommends that the public commercial vehicle licence fees be adjusted to cover first the costs of administration and enforcement of The Public Commercial Vehicles Act, with the adjustment thus obtained transferred to the registration fee for the weight group.

This means that public commercial vehicles and private carriers will pay equal registration and the public commercial vehicles will pay an additional amount to cover the extra costs involved in administering and enforcing The Public Commercial Vehicles Act. The result would be to place public carriers on an equal footing with private carriers.

3. Report of the Ontario Committee on Taxation, 1967, p.263

Although the revenue received from P.C.V. and P.V. permits is not a significant portion of the total revenue collected by the Department of Transport, it does substantially exceed the costs of administering these permits. As a result, the contribution made by owners of public commercial vehicles and public vehicles exceeds that made by owners of similar private vehicles. There is clearly no reason to suppose that for similar vehicles moving similar distances the road costs incurred as a result of public motor vehicle traffic are any different from the costs incurred as a result of private motor vehicle movement. If the average public motor vehicle travels farther per year than the average private vehicle - and we have seen some evidence that this is so - fuel taxes will more appropriately apportion responsibility for costs incurred in this travel than would differential fixed fees for the two groups. The revenue from P.C.V. and P.V. licences is a charge against public motor vehicles that ultimately reduces their use and tends to shift vehicle traffic into the private category. The use of private commercial trucks or buses and private passenger vehicles is thereby enhanced. We accept the argument that public motor vehicles should be subject to regulation of the present kind and that they should bear the costs of administering these regulations, but we believe that to the extent that P.C.V. and P.V. fees produce net revenue - i.e., revenue in excess of administrative costs - an element of unwarranted discrimination is introduced into the process of allocating road costs between types of vehicles. We therefore recommend that:

The fees charged for operating licences under The Public Commercial Vehicles Act and The Public Vehicles Act be set at a level such that the revenue derived will approximate the costs incurred in administering these two Acts.

## 3. (Cont'd)

Our intention in formulating this recommendation is not only to call for a reduction in the gross amount of P.C.V. and P.V. fees but also to relate any differences in fees for different classes of these vehicles solely to differences in administrative costs. We do not, however, propose any specific change in the structure of the rates, because the whole matter of most appropriate P.C.V. licensing arrangements is currently under study by the Ontario Highway Transport Board. We have therefore limited our concern to the broader problem of the appropriate relationship between P.C.V. and P.V. fees and motor vehicle charges in general.

Currently, all commercial motor vehicles must be registered.

Depending on the gross weight of the vehicle, the fees payable vary from \$33.00 to \$2,021.00. Approximately 70 million dollars was collected by the Province in 1976.

In addition, public commercial vehicle operators must plate each vehicle operated under their licences. The Public Commercial Vehicles Act requires that fees be paid for the plates. These fees, based on gross weight, vary from \$28.00 to \$754.00 for a full one year term or \$832.00 if four quarterly plates are purchased. Class H carrier plate fees range from \$17.00 to \$453.00 for a full year plate. In 1976 the Province collected \$7,796,726 in such fees excluding L permit fees of \$1,120,500. It is important to note that these plates are not transferable between vehicles. They are in other jurisdictions such as Quebec.

That Class H carriers are charged fees approximately 60% of those charged other classes of carriers is a contradiction. The original rationale for different fee structures is unclear. Perhaps it was an attempt to keep down the costs to carriers who deal directly with the public. If so, the same rationale should apply to other shippers.

If Public Commercial Vehicle fees are designed to tax the carrier

to reflect the "monopoly rent" allowed by the licence, then there is no logical reason to differentiate between classes of licence. There is no evidence to suggest, for example, that a Class D carrier realized 40% more in monopoly profits than a Class H carrier. It is difficult to see how this argument can be used to set a level of taxation, let alone to rationalize the existing Class H differential.

There are further differentials in the PCV fee structure to recognize the unique needs of the farming community and the necessity of commercial trucks to that industry. There is no rationale for these differences other than keeping the carrier's costs down in the hope that the "saving" will reflect itself in lower costs for the farmer. If this is the rationale, then there is no reason not to apply it to all shippers.

Public vehicle operators must plate each vehicle operated, but pay no fee at all. The Committee notes that in the 1972 budget the then Treasurer stated that the Government had undertaken a complete review of the structure of fees and licences and that "generally speaking, fees are supposed to be charged which bear a reasonable relationship to the administrative or operating costs associated with a service, a control function of government, or a benefit to the user of particular facilities".

The revenues obtained from the current level of fees appear to exceed either the administrative cost or the control function necessitated by PCV licensing. The Committee has noted the 1975 expenditure of \$2.8 million for P.C.V.A. and P.V.A. enforcement. The P.C.V. fees generated over \$8.9 million in revenue during the same year. The Chairman of the Ontario Highway Transport Board testified that the Board assesses costs and succeeds in its goal of being self-sustaining. Tariff filings



are not relevant because separate fees are collected.

The Committee is therefore led to the conclusion that the fees charged for public commercial vehicle licences would be among those determined by the latter criterion, the "benefits to the user of a particular facility", that is, the business activity to which the PCV licence holder is thereby entitled. Whether monopoly profits exist in all cases of licensed for-hire truck transportation is debatable. Where it has been alleged that such profits are being made by particular firms, they have not been quantified.

While this criterion for the determination of fee schedules may be justifiable, the Committee is concerned that PCV licence fees are based on an assumption of monopoly profits which are unquantified.

There is merit in retaining the requirement that vehicles operated under a Public Commercial Vehicle licence be plated. However, levying the current level of fees is a disservice.

A submission in 1972 to the then Minister of Transportation and Communications stated in part -

The for-hire carrier does not seek to escape the imposition of some public tax on the 'material benefits' contained in his licence, nor does he wish to avoid any control on his earning capacity. We recognize that the Public Commercial Vehicle Licencing system limits competition to some extent. Our contention is that the P.C.V. Licence Fee is an inequitable tax in that it bears no relationship to what (a previous Minister) called 'material advantages' or 'restraint of competition.'

The only way to gauge the material advantages of a licence or the net result of any "restraint of competition", presuming that it is possible to measure such things accurately if at all, is to levy a tax on the net result of both, namely the net earning of the regulated carrier. The increasing number of amalgamations in the trucking industry testifies to the slimness of the benefits. We do not deny that public carriers can, and do, earn profits from their businesses.



What we do deny is that a particular licence automatically "earns" its holder anything or that the PCV licence fee bears any relationship to potential earnings. The fee is charged before any business can be done or any "advantage" can be taken. Furthermore, whatever business is done or advantage taken is already taxed when translated into profit terms. The economic effect or the lack of competition will show up on a carrier's profit and loss statement too.

In equity, should not all "material benefits" derived from the same use of the same highway system be taxed equally?

The private carrier benefits in much the same way as the public carrier except that his benefits are contained in less explicit terms. The public carrier declares his profit at the end of each year on the business of transportation while the private carrier declares his overall profit. Surely it has not escaped the Government's notice that the private carrier's benefit is the improved position of his company as a result of the savings private carriage "earn" for him. The benefit from the use of the roadway is identical. One is clearly earned by virtue of a publicly granted licence, the other is just as surely "earned" from use of the roadway but without any public licence.

Given the reasons cited above and the recommendation in this report regarding the taxation of Public Commercial Vehicle licence transfers, the Committee finds no purpose in continuing the present fee structure.

#### 4.7.3 Intra-Corporate Transportation

Section 2 of The Public Commercial Vehicles Act now requires inter alia:

No person shall operate a commercial vehicle on a highway for the the transportation for compensation of goods of any other person unless pursuant to an operating licence.

The principle of this section brings for-hire transportation within the provisions of the Act and excludes private transportation. One condition of private transportation is that the goods transported in a vehicle be owned by the owner or lessee of the vehicle. The owner or lessee may be an individual, a firm or a corporation. The Committee accepts this concept. However, it is more limiting in specific cases than observance

of general principle would require. One group stated to the Committee:

Because of the wording of the Act, one company, being one person, cannot move, for compensation, the product of their subsidiary or affiliated company since they are a separate legal person, without obtaining a licence from the Ontario Highway Transport Board. This imposes a hardship on these companies.

Our Members strongly advocated that a Public Commercial Vehicle operating licence should not be required by a person operating a truck on the highway for the transportation, for compensation of goods of any other person if that person is the holding company, subsidiary company or affiliated company of the person operating the truck. <sup>12</sup>

Another association commented:

In the current situation, however, the Association does not believe that The Public Commercial Vehicles Act should impinge on private carriage. Furthermore, it is the Association's view that private carriage should be permissible among members of a corporate family provided the affiliated corporations or individuals are effectively controlled by one person, one corporation or a group of persons acting in concert. <sup>13</sup>

The Committee favours the principle of these submissions. For the same reasons that government policy should be directed towards the creation of an environment in which for-hire carriers are not unduly restricted from competition, it should not place undue restrictions on users and potential users of private transportation. The principles of for-hire transportation and private transportation would not be offended by some type of exemption of further intra-corporate movements of goods.

The Committee is concerned however, about the potential impact on the for-hire trucking industry if very substantial corporate conglomerates are permitted complete freedom for intra-corporate private transportation. While the principle is extremely attractive, in particular cases careful analysis and assessment are required before final policy can be formulated.

#### 4.7.4 Workmen's Compensation

For assessment purposes the Workmen's Compensation Board classifies employees into the main business occupation as reported by the employer. For example, the for-hire trucking industry is "rate #656 in Class 20". The assessment rate is reviewed annually. The assessment is payable by the employer, in advance, on his estimate of the payroll. In the year following the estimate, the employer is required to submit a report showing the actual payroll. Adjustments are made for over and under payments on the previous estimate.

The maximum earnings on which assessment is based, is included in The Workmen's Compensation Board Act and is adjusted from time to time by amendments to the Act.

The following table shows the trend in the assessment rate for highway transport (of goods) employers, the maximum earnings on which assessment is based and the maximum assessment payable by employers.

The Committee was informed that 75% of the accidents reported to the Board by the highway transport industry take place on the premises of the carrier rather than on the highway.

The Workmen's Compensation Board stated to the Committee:

Under The Workmen's Compensation Act, firms are classified according to end product produced or type of service provided.

Firms engaged in for-hire trucking as a business, or for-hire trucking, i.e., the transportation of goods belonging to others, are included in the Regulations made under The Ontario Workmen's Compensation Act in Class 20, and for rating purposes are classified by the Workmen's Compensation Board in Rate Number 656.

TABLE 8

<u>YEAR</u>	<u>ASSESSMENT RATE PER \$ 100 PAYROLL</u>	<u>MAXIMUM EARNINGS ON WHICH ASSESSMENT IS BASED</u>	<u>EFFECTIVE DATE</u>	<u>MAXIMUM PAYMENT BY EMPLOYER PER EMPLOYEE</u>
1970	\$ 2.25	\$ 7,000	July 1, 1968	\$ 157.50
1971	"	9,000	July 1, 1971	202.50
1972	2.50	9,000	July 1, 1971	225.00
1973	2.85	10,000	July 1, 1973	285.00
1974	3.25	12,000	July 1, 1974	390.00
1975	3.25	15,000	July 1, 1975	487.50
1976	3.95	15,000	July 1, 1975	592.50
1977	4.40			660.00



A description of the industry included in Rate number 656 is as follows:

Business of Supplying Truck Drivers to industry, Carting, Teaming and Trucking; Operations of Forwarding Companies or persons engaged in the business of Transportation by Canoes, Scows or Sleighs; Sanding Streets or Roads; Scavengering; Street-cleaning or removal of Snow or Ice; Warehousing or Storage (with Carting, Teaming or Trucking).

The 1976 assessment rate for all firms classified in Rate number 656 is \$3.95 and for 1977 the assessment rate will be \$4.40 per hundred dollars of assessable payroll.

Private Trucking Firms are not engaged in trucking as a business, but operate trucks for the transportation of their own goods or products. This type of trucking is considered by the Board to be incidental to the firm's business and is classified and rated with the business. For example, the operation of a retail mercantile business is classified in Rate Number 934 with a 1976 assessment rate of 50¢ per hundred dollars of assessable payroll. If the retailer operates trucks for the delivery of his goods, the trucking payroll bears the same 50¢ rate. Similarly, a firm engaged in the wrecking of buildings is classified in Rate Number 859 with an assessment rate of \$13.40 for 1976, and any trucking carried out by the firm in connection with its wrecking operations bears the same \$13.40 rate.

Claims paid for injuries to employees of such industries are charged against the industry rate number and reflected in the assessment rates charged which are based on industry cost experience. <sup>14</sup>

There is, accordingly a tendency for persons or firms wishing or required to be covered to classify downward. On June 21, 1976, the following statement appears on the record of the Committee:

An unlicensed trucker in answer to a question, said yes, he pays Workmen's Compensation as well as the transport industry. But there is a difference. We have enquired of the Workmen's Compensation Board and find that the person is listed under Category 423, which is buying and selling feed, seed, flour and grain. The Board's rating for that category is \$1.85 per \$100 of payroll. <sup>15</sup>

Another point of interest lies in the current law relating to the Workmen's Compensation Board, which applies equally to private and

for-hire carriers. Put succinctly, the Ontario Trucking Association stated in 1976:

The regulated trucking industry in Ontario is deeply concerned about the escalating cost of Workmen's Compensation. Maximum premiums per employee have risen to an expected \$660 in 1977, an increase of 318% from \$158 in 1970. The major contributing factor in this increase has been the steady escalation of benefits to injured workers and their dependents, in the form of both legislated amendments to The Workmen's Compensation Board Act, and the apparent adoption by the Board of a more sympathetic attitude toward the injured worker.

Assessments should be payable quarterly, even if this necessitates the addition of a small premium to cover interest income lost by the Board. Many employers find it very difficult to raise the substantial amounts of cash needed each Spring to pay their Workmen's Compensation Board assessments. The household goods moving industry is an example, with 80% of its revenues earned during the summer moving season.

The very nature of the trucking business forces most of the smaller and medium sized carriers to pay high interest rates for borrowed funds.

It would normally be to their advantage to reimburse the Board for its lost interest income, and so avoid having to borrow at high commercial rates in order to pay full year lump sum assessments.

These employers should therefore have the option to pay Workmen's Compensation Board assessments at quarterly intervals in arrears. The Board should set its assessment rates on the assumption of quarterly payments, and allow a discount for lump sum payment.<sup>16</sup>

The Workmen's Compensation Board officials appearing before the Committee indicated the Board's intention to move in this direction. The Committee favours this principle in relation to both for-hire and in private transportation firms.

#### 4.8 Recommendations

The Committee recommends that:

1. The current regulations under The Public Commercial Vehicles Act which set out the fees for Public Commercial Vehicles vehicle licences for operators of Class A, C, D, T, K and H be repealed.
2. In place thereof, a flat fee regardless of vehicle size be substituted to cover only the administrative costs of issuing Public Commercial Vehicle plates.
3. Immediate consideration be given to amending The Public Commercial Vehicles Act to exempt from licensing a company which is transporting only the goods of a related company subject to wholly common ownership or alternatively, to deem "public necessity and convenience" found in the application in the predescribed situation.
4. Employers as an option should be able to pay Workmen's Compensation assessments quarterly or annually.
5. The Ministry of Labour include all truck drivers in a single category for the purpose of Workmen's Compensation.
6. Non-resident carriers not be assessed for Workmen's Compensation if they do not employ Ontario workmen and if they are similarly and adequately insured in their home jurisdiction.
7. The current exemption of private carriage from the provisions of The Public Commercial Vehicles Act be retained.

## PART III - CHAPTER 4

### REFERENCES

1. Ministry of Transportation and Communications, Truck Transportation in Ontario Phase 1, Page 70.
2. Ibid
3. Ministry of Transportation and Communications, Commercial Truck Survey 1975, July 1976., Page 11.
4. Ibid
5. Op Cit, Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 1, Pages 68, 69.
6. Phillips Cable Brief, September 3, 1976, Page 2.
7. Chemical Producers Association Brief, July 15, 1976, Page 3.
8. Canadian Industrial Traffic League, Brief , July 1976 Page 4.
9. Op Cit, Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 2, Survey of Shippers.
10. Ministry of Transportation and Communications, 1975 Commercial Truck Survey, Page 32.
11. Ontario Trucking Association. In a Submission by the Ministry of Transportation and Communications, September 1, 1975.
12. Op Cit, Canadian Industrial Traffic League, Brief Page 16.
13. Canadian Manufacturer's Association, Brief, July, 1976. Page 10.



14. Minister of Labour to Chairman Bud Gregory, M.P.P., December 6, 1976.
15. Organization of Independent Truckers. In oral Testimony - before the Committee, July 1976.
16. Ontario Trucking Association, Brief to the Joint Consultative Committee of the Workman's Compensation Board, October 12, 1976.

- Tables
1. Distribution of Tonnage By Type of Carrier.
  2. Average Length of Haul.
  3. Distribution of Tonnage by Class of Carrier.
  4. Distribution of Tonnage by Class of Carrier Carriage. Private Carriers.
  5. Distribution of Tonnage by Class of Carrier Carriage. For-Hire Carriers.
  6. Characteristics of Private Trucking.
  7. Growth of Private Trucking
  8. Workman's Compensation Board Assessments 1970-1977.

- Figures.
1. Distribution of Truck Traffic by Gross weight and by Class of Carriage.

## CHAPTER 5

### MARKET STRUCTURE

#### 5.1 Definition of the Market

Market structure, or rather elements of market structure, are significant economic features of the market which affect the behaviour of firms in the industry supplying that market. The elements of market structure include:

1. Concentration
2. Product differentiation
3. Barriers to entry
4. Growth rate of market demand
5. Price elasticity of market demand.<sup>1</sup>

The Committee regards the degree of foreign ownership and the growth of private trucking as further elements of the structure of the market for for-hire transportation. Private trucking also supplies service. To some degree, that portion of the overall transportation market may be distinct from the for-hire market. Were this the case, the market for private transportation would be characterized by its own elements of structure. Some argue that the supply and demand for truck transportation is one market, regardless of whether it is supplied by private vehicles or for-hire vehicles. Were this the case, common elements would exist for this broader market.

Others argue that an even broader market exists - one which includes rail and other modes as suppliers of transportation service generally. In this case, for-hire firms compete against both private trucking

and rail to supply a given demand. While this is true in some areas, it is not always so. The markets for each "mode" or each alternative are less interactive in some areas and some situations than in others. Firms which need transportation service come to know, based on the types of commodities it has to move, its need for advertising, its corporate structure, its location, etc., which mode best suits them. Rail is more efficient in certain areas for certain commodities, for-hire trucking is so for other areas and commodities; private trucking may yield the firm benefits which neither of the other alternatives could possibly offer.

The variables in the mode selection equation become even more predictable given the relatively frequent abandonment in recent years of rail lines. Truck has largely taken this share of rail traffic. There will always be inter-modal competition for many commodities particularly in high volume areas, but it may be that competitive balances will stabilize in the absence of new thrusts by governments. Certain segments of the market will alter their mode preferences in accordance with price changes, more labour stability in one mode than another, etc. However, these changes may not significantly affect the established balance in the aggregate particularly between truck and rail.

On one hand, the markets for transportation service are becoming more differentiated. On this subject, one source states "transportation" does not comprise a single industry.

Because each carrier mode (and individual carrier in one mode) produce a differentiated service in terms of the attributes desired by the shipper, thus, the demand situation (for each mode) would show some degree of inelasticity (and the degree to which demand is inelastic) would be shaped by the attributes shippers value in a service they purchase and the degree to which one mode provided those attributes more than competing modes and, <sup>2</sup>secondarily by the price offerings of the competing modes.

In their competition for traffic, the modes of transport show unlike features not only in cost structures, but also in the service they supply to shippers. Such things as speed, reliability, time of day of delivery, completeness of service, availability of equipment, etc., are becoming more and more the factors by which a shipper will select a carrier of transportation mode.<sup>3</sup>

Given the heterogeneity of supply by different modes and by competing carriers within a mode, then:

Just as there is no single transport supply curve in terms of ton miles, there is no possibility of seeing a generalized demand curve...<sup>4</sup>

It is obvious that differentiation of both demand and supply conditions among inter-modal competitors defeats any generalized supply and demand analysis for price determination under an industry concept. Even generalization on terms of a few groups of competing industries is not valid. There is a distinctive demand and supply situation for each carrier, for each commodity in different areas and for varying lengths of hauls.<sup>5</sup> (Committee's emphasis)

A "system concept" is developing where buyers of transportation have a concern not merely for direct transportation costs but also for the whole set of inter-related functions that comprise a system that moves goods into, through and out of the production process and then distributes them to the consumer.

This is occurring in all the highly industrialized jurisdictions with which the Committee is familiar. It is at one and the same time a cause and an effect; a cause for the growth of truck transportation generally and private truck transportation more specifically and an effect of other overriding economic forces.

Even within the trucking sector, the product is differentiated. Products can be differentiated in many ways, for example by establishment of a recognized brand name and differing conditions of sale or guarantees. If a homogeneous product is being offered, demand for the



product tends to be relatively price elastic. Price will be the overruling factor in determining what service will be purchased. In economic theory, assuming a competitive market and a homogeneous product, the firm supplying the product will operate where marginal and average costs are equal.

However, if the product is differentiated, the firm has more latitude with respect to price. Other characteristics of the product such as speed of delivery, fewer claims and labour stability may be sufficient to market that product, even if its price is higher in relation to other competitive products.

In the trucking industry, a great deal of product differentiation exists. Two truck rides are certainly not identical.<sup>6</sup>

The situation is more complex, however, because services that may be viewed as differentiated in the aggregate, may well be found to be homogeneous on a particular run, for a particular commodity.<sup>7</sup> This has significant implications for future research. Specific routes, commodities and communities must be examined to assess the major questions facing the trucking industry. This must be done if true conditions are to be drawn regarding barriers to entry, the effects of government regulation and concentration.

From another point of view, integration of railway companies and steamship lines into the trucking segment distort the apparent differentiation. This integration has been significant and unique in Canada.

It is either uncommon or illegal in other jurisdictions with which the Committee is familiar:

The question of whether one can define a separate trucking industry in Canada arises (in part) due to the degree of inter-modal ownership.<sup>8</sup>

Canada's largest water carrier operates a large fleet of public commercial vehicles in central and western Canada (Kingsway Transports Ltd. and associated companies).

Canadian National Railways, for example, own considerable interests in the trucking industry. Readily identifiable firms owned by Canadian National and operating in Ontario include:

- Canadian National Express
- Canadian National Transportation Ltd.
- Hear Transport Company Ltd.
- Husband Transport Ltd.
- Husband International Transport (Ontario) Ltd.
- Crown Transport Ltd.
- Provincial Tankers Ltd.
- Midland-Superior.

Similarly, companies owned by Canadian Pacific Railways and operated in Ontario include the following major trucking concerns:

- Canpac Leasing Ltd.
- CanPak Sales
- Canadian Pacific Transport
- Smith Transport Co. Ltd.
- Highland Transport Co. Ltd.
- Newman's Transport Co. Ltd.
- Smith Transport (International) Ltd.
- Deluxe Transportation Ltd.

In 1972, the separately operated trucking subsidiaries owned by Canadian National earned a net operating profit of \$2.5 million. This resulted from a growth of 12% in traffic volume and 15% in gross revenue over 1971. <sup>9</sup>

In 1973, the net operating profit was \$3.4 million. This represented a return on investment of \$24.2 million or 13.9%, compared with an 11.1% return in 1972. Revenues increased by 15.1% to \$7.5 million. Expenses increased 14.0% to \$6.6 million. <sup>10</sup>

If one total transportation market existed, and one considered Canadian National and Canadian Pacific's rail freight with their truck freight, one would see that they clearly dominate this total market. This excludes a consideration of the Ontario Northland Transportation Commission which owns and operates both the Ontario Northland Railway and Star Transfer. If the holdings of certain other major trucking companies were considered it would be obvious that a very few firms would clearly dominate the supply of truck transportation in this province.

An understanding of what constitutes the transportation market (or markets) and the elements of the market's structure is important if a rational transportation policy is to be followed. It is necessary to understand the operation of the market so that policies and regulatory law may be implemented to recognize the realities of that market.

If one can discern reliable links between structure and elements of performance, one can predict reliably the future performance of the industry and set objective policies.

If we can spot some feature of market structure which regularly causes poor market performance, we may find the key to designing policies to change the environment and raise the level of performance. <sup>11</sup>

## 5.2 The Inter-Modal Split of Market

Despite the degree of differentiation of products discussed previously, there has been competition between rail, truck and to a lesser degree, air and water transportation. This competition has had its effects:

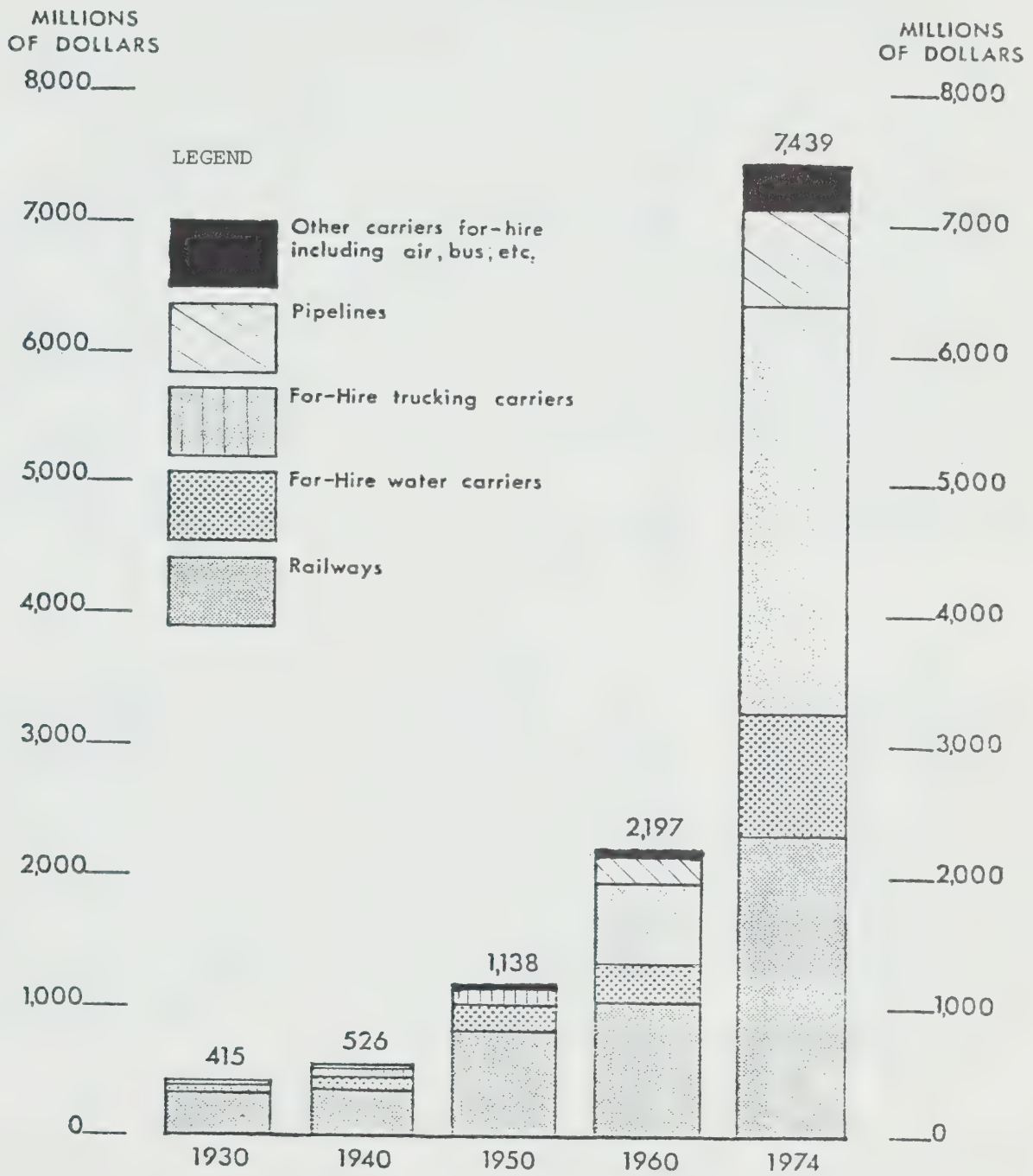
The continued competition of alternative transportation modes has made the demand schedule for rail transport much more elastic and shifted the curve downwards over what would have been the position without these competitive modes. There is no doubt that these developments have taken place. <sup>12</sup>

Freight transportation has mushroomed over the past decade as evidenced in the attached Figures 1 and 2:



FIGURE 1

# Operating Revenues of Canadian Domiciled For-Hire Carriers Engaged in Freight Transportation

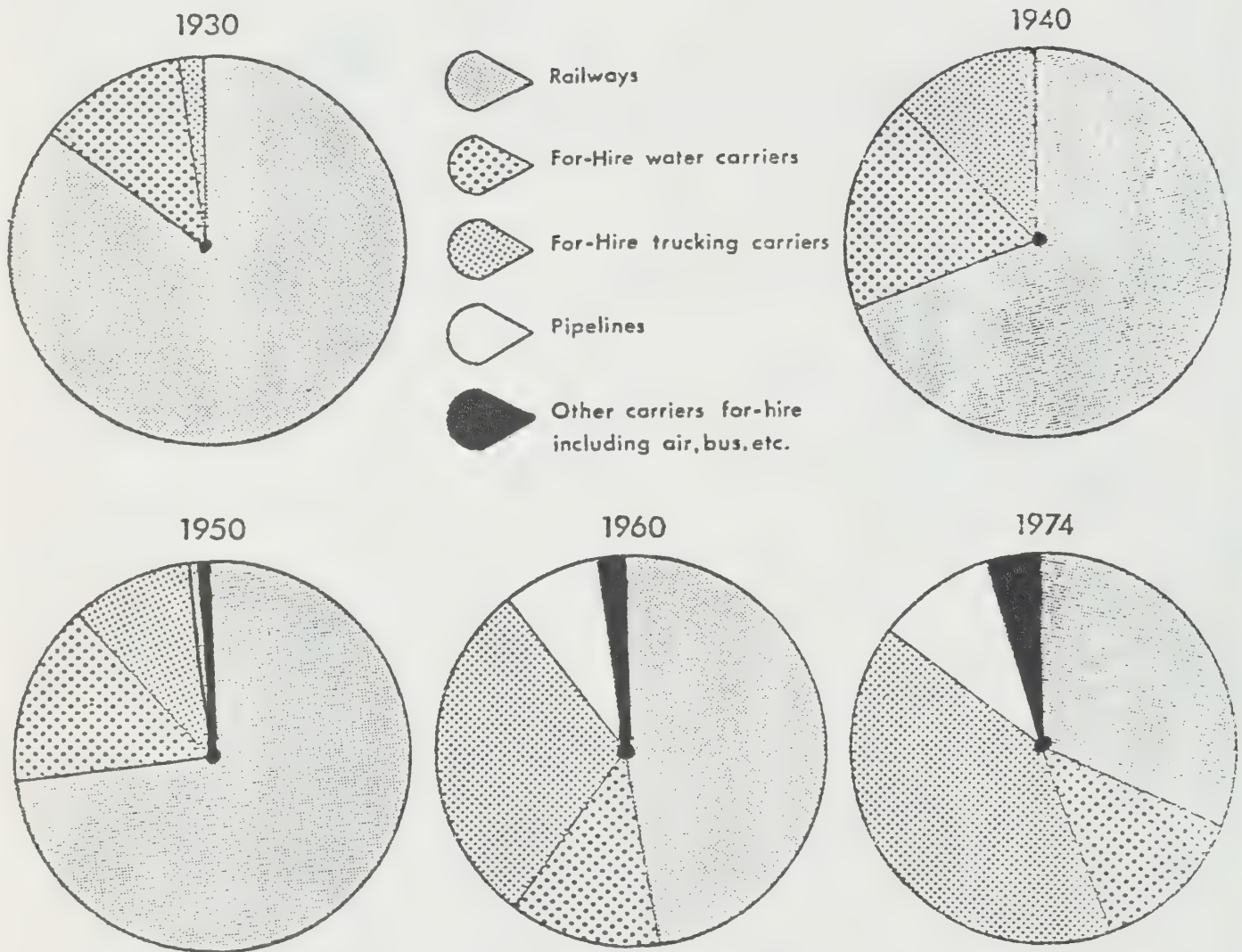


Sources:  
 Statistics Canada Railway Transport Part II Cat. no. 52-208  
 Statistics Canada Gas Utilities Cat. no. 57-205  
 Statistics Canada Oil Pipeline Transport Cat. no. 55-201  
 Statistics Canada Census of Merchandising and Service Establishments 1931  
 Statistics Canada Motor Carriers Freight-Passenger  
 Statistics Canada Motor Carriers Freight Cat. no. 53-222 and 53-223  
 Statistics Canada Motor Transport Traffic Canada Cat. no. 53-207  
 Statistics Canada Water Transportation Cat. no. 54-205  
 Statistics Canada Water Transportation Data Sheet, Advance Statistics  
 Statistics Canada Air Carrier Financial Statements Cat. no. 51-206  
 Royal Commission on Canada's Economic Prospects,  
 Transportation in Canada, by J.C. Lessard

Notes pertaining to tabulations:  
 (1) Some of the figures are estimates only.  
 (2) Pipeline revenues exclude revenues earned by distribution systems.  
 (3) Trucking revenues exclude revenues of trucking firms without employees. CN express is included in rail not trucking.  
 (4) Rail figures include subsidies

FIGURE 2

# Operating Revenues of Canadian Domiciled Carriers Engaged in For-Hire Freight Transportation by Mode of Transport



## Sources:

Statistics Canada Railway Transport Part II Cat. no. 52-208  
 Statistics Canada Gas Utilities Cat. no. 57-205  
 Statistics Canada Oil Pipeline Transport Cat. no. 55-201  
 Statistics Canada Census of Merchandising and Service Establishments 1931  
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## Notes pertaining to tabulations

- (1) Some of the figures are estimates only.
- (2) Pipeline revenues exclude revenues earned by distribution systems.
- (3) Trucking revenues exclude revenues of trucking firms without employees. CN express is included in rail and not trucking.
- (4) Rail figures include subsidies.

Some of the most significant highlights are as follows:

1. Total freight transportation measured by operating revenues of for-hire carriers increased from an estimated \$400 million in 1930 to an estimated \$7.4 billion in 1974.
2. The fastest growing segment of the freight transport industry was the for-hire trucking industry which increased its revenue from an estimated \$8 million in 1930 to an estimated \$3.1 billion in 1974.
3. The two traditional modes of transport, rail and water increased their combined annual revenues from an estimated \$400 million in 1930 to an estimated \$3.3 billion in 1974.
4. The new modes of transportation such as pipelines and air freight have been growing at a very high annual rate during the last 20 to 25 years. They have, however, not yet reached the same degree of importance as some of the older more conventional modes.

Notwithstanding the importance of the overall increase in transport revenues by all modes of transport, an even more drastic change took place in the distribution of market shares held by the different modes of freight transport as illustrated by Figure 2. The following are the highlights:

1. The two traditional modes of transport, rail and water, which enjoyed almost complete dominance in 1930, have steadily decreased their combined share of the total transportation market from 98% in 1930 to 44% in 1974.
2. Pipelines, which accounted for only one-half of one percent of the market in 1950, increased their share of the total to 10% by 1974.
3. The most significant structural change which took place in the Canadian transport industry between 1930 and 1974 was the birth and the growing up of the Canadian for-hire trucking industry.

This industry which in 1930 represented only 2% of the market increased its market share to 42% by 1974 and thus became the largest mode of freight transport, as measured by operating revenues.



These figures indicate the rapid growth of for-hire truck transportation at the expense of rail and water. This is consistent with what the Committee found in European jurisdictions. Again, this trend is independent of the regulatory system which exists.

In Great Britain, trucks are hauling nearly 90% of the goods, with rail carrying approximately 8%. In Belgium, road freight accounts for 46% - 48% of the total tonnage, while inland waterway and rail account for some 26% each. The Belgian railway has abandoned a significant number of routes over recent years.

In Germany, the situation is similar, however, rail has a somewhat higher share, 33% of domestic traffic, than other countries. Road accounts for approximately 41% of the total. Since 1970, private road haulage increased by 12%; for-hire by 4% and rail by only 0.1%.

In the European Economic Community over the period 1963 to 1972, rail's relative share of the market for the transportation of all goods fell. Road transport's share grew from 44% to 50%.

Canadian economic and political realities mean that there will likely not be significant changes in the existing aggregated shares of all traffic due to inter-modal competition. However, shares may change for other reasons. One study concluded:

- .. The Canadian intercity for-hire trucking industry as a whole displays... a positive correlation with cyclical and secular trends in agricultural, construction and manufacturing and a positive dependence in respect to fluctuations in user's costs for railway freight service.<sup>14</sup>

In other words, demand for trucking depends on more than simply price.



There will always be competition over specific routes. In this connection, the presence of "agreed charges" for rail companies has had a salutary effect on the rail's competitiveness with truck in certain areas of the province. Both agreed charges and commodity competitive rates are designed to meet competition from other transportation modes. For example, agreed charges account for approximately 20% of the total non statutory grain transportation in Canada from 1970 to 1973. Agreed charges are negotiated by the carrier and the shipper, are usually in effect for one year and require that a fixed percentage of the shipper's total traffic, usually 80% to 100%, be shipped by rail. In order to achieve a discount on his costs, the shipper is granting the rail carrier a limited monopoly on his business.

Commodity competitive rates are available to some shippers and provide lower rates on specified commodities between specified points. These were originally designed and continue to make the rail carriers more competitive with truck carriers. These rates have been the subject of a great deal of controversy and claims of unjust discrimination, particularly from the western provinces.

The effects of new federal legislation are yet unknown, therefore it cannot be said with certainty whether rail's position will be altered. If "user pay" is to be phased into the rail and steamship sectors, it may well affect their competitiveness vis à vis long distance highway transport. The Government of Ontario must keep abreast of these matters through dialogue with the Federal Government. Rail fixed and variable costs have been the subject of much investigation and comment by the other provinces of Canada.

### 5.3 Ownership

#### 5.3.1 Government Involvement

The Committee's interest in ownership of Ontario trucking firms and related characteristics did not arise from any preconceptions or desire to make specific recommendations. These factors are important because levels of government which control the for-hire industry have the capability of influencing ownership patterns any time a transfer of shares or takeover occurs. The Public Commercial Vehicles Act provides that:

no operating licence shall be transferred without the approval of the Minister in writing...

the Minister shall refer an application for approval of the transfer of an operating licence to the Board and the Board shall hold a hearing and shall report to the Minister whether or not public necessity and convenience...will be prejudiced...

the Minister may require the directors of a corporation that is the holder of an operating licence to report to the Board any issue or transfer of shares of its capital stock and where the Board finds after a hearing, that the number of shares to be issued or transferred affects the de facto control of the operations of a corporation, such issue or transfer shall be deemed to constitute a transfer of all operating licences held by such corporations and, unless the transfer is approved, such operating licences shall terminate.

Section 6 of The Public Commercial Vehicles Act is particularly relevant to ownership and it states in part:

The Board may in a certificate issued by it..prescribe terms and conditions to govern the transportation of goods by public commercial vehicles pursuant to the licence...

While the Ontario Government has not enunciated a policy respecting the restriction of fleet size, this section has been used from time to time by the Ontario Highway Transport Board to restrict the number of vehicles which may be operated.

One must also look to the Federal Government in this area as it can exercise considerable authority.

The Committee in the Interim Report page 11 stated:

under existing legislation, a person operating an extra-provincial road transport undertaking must notify the Canadian Transport Commission when he proposes to acquire the business of any person whose principal business is transportation, whether or not such business or undertaking is intra-provincial or extra-provincial. The Commission publishes the notice in the Canada Gazette and also notifies the Combines Investigation officials.

It is also necessary to recognize the presence and authority of the Foreign Investment Review Board. This Board has authority to disallow any takeover of a Canadian firm by a foreign firm if the takeover is not in the public interest.

This authority gave rise to one case of particular interest. An American owned company applied to purchase a Canadian transportation company. The Foreign Investment Review Board turned down the application. An application by the American company for cartage authority in Metropolitan Toronto was rejected because of the decision of the Foreign Investment Review Board. The case was appealed by the applicant carrier to the Supreme Court of Ontario which ruled that the Metropolitan Toronto Licensing Commission had no mandate to consider the decision of the Foreign Investment Review Board. The Metropolitan Toronto Licensing Commission's decision was overturned and the applicant carrier is now operating in Toronto.<sup>15</sup>

Of course, the major influence of the Federal Government occurs through its ownership of transportation firms. As indicated, the federally-owned Canadian National Railways owns a number of Ontario-based

trucking firms which supply a large capacity to the Ontario market. Through the purchase of these firms, the Federal Government has a direct influence on ownership and concentration within the trucking industry. To a lesser extent, the Province is similarly involved as it owns the Ontario Northland Railway and its trucking subsidiary, Star Transfer.

The direct role of governments in owning transportation firms may be given new impetus as a result of the recent case which confirms a province's right to acquire an airline undertaking without seeking the approval of the Canadian Transport Commission although this may be the subject of further legislation.

#### 5.3.2 Ownership - A Consideration of the Numbers to Use

There are a number of ways in which to approach this question. There is no one particular way which yields final conclusions.

In 1975, there were 11,698 Public Commercial Vehicle licences in effect. In 1974, there were 10,337 and in 1971 there were 9,976. In those same selected years, the holders of those operating licences purchased 45,621, 44,426 and 40,003 Public Commercial Vehicle licences. These figures exclude trailers, which after 1970 were no longer required to be plated under The Public Commercial Vehicles Act. The actual number of vehicles plated and used by the for-hire industry cannot be deduced from these aggregate figures because it includes three, six, nine and twelve month plates. Therefore, many vehicles would be plated more than once during a year. The figure 45,621 is inflated insofar as indicating vehicle numbers is concerned.<sup>16</sup> Appendix P contains the Ministry of Transportation and Communications' licensing figures for Public Commercial Vehicle purposes, from 1928 to 1975.



The Ministry of Transportation and Communication's Study

Truck Transportation in Ontario in a chapter entitled "Corporate Linkages in the Trucking Industry" stated:

Ideally, revenue figures and ownership data for each carrier could be used to answer the questions posed. But, since carriers are not required to file financial results for public perusal, no such data is directly available. The only accessible source for the necessary information is the Ontario Trucking Association.<sup>17</sup>

While this comment emphasizes the importance of the recommendations in the Interim Report (and which are remade in this Report) regarding the filing of financial statements, it at the same time emphasizes that analyses are subject to change as new and relevant facts emerge.

The Committee asked the Ministry of Transportation and Communications to review all operating licences at a given day to derive how many firms held the outstanding operating licences. The number of licences outstanding at any one time does not reflect the number of firms which hold these licences because there are some firms which hold licences of more than one class. It also does not reflect the actual number of authorities which exist because privileges (resulting from extension applications) are not counted in the figures normally published. Neither the manual files nor the computer records<sup>18</sup> maintained by the Ministry of Transportation and Communications are designed or able to produce reliable data with respect to the number of firms which hold outstanding licences or to the number of privileges held by those licensees (see also chapter 3 of this Part, page 50).

### 5.3.3 Concentration of Ownership

The Committee was not able to determine whether or not the for-hire trucking industry in Ontario is concentrated to an unfavourable degree. There was very little data presented during the hearings on this subject. That which the Committee was able to derive from published material was inconclusive.

Appendix Q contains the results of calculations done by the Committee. Based on 1974 Statistics Canada Report on the Motor Carrier Industry (1973 data) and reconstituted by the Ontario Trucking Association <sup>19</sup> the following comments are possible: Each of the 59 largest Ontario based firms operated on average, 527 pieces of revenue equipment. This represents 39.3% of all revenue equipment reported. Smaller firms operated an average of seven pieces each or 60.7% of all reported revenue equipment. Fifty-nine firms represent 1.4% of those firms which reported to Statistics Canada and a lesser percentage, approximately 0.7% of all Ontario licensed firms. The fifty-nine Class I firms reporting, earned 54.9% of reported revenue, an average of \$11,226,000 per firm. The other 98.6% of reporting firms, approximately 99.3% of all Ontario firms, earned an average of \$135,332 each.

It is because conclusions were not possible from the data at hand that the Committee's calculations are presented as an Appendix rather than as a formal portion of this Report.

5.3.4 Foreign Ownership

The Committee was unable to draw any conclusion from data available. As a result, the information gathered is presented at Appendix P, rather than as a formal portion of the Report.

The Government should examine the extent of foreign direct investment in the truck transportation industry.

5.4 Recommendations

The Committee recommends that:

1. The Ministry of Transportation and Communications coordinate a study to determine the concentration of ownership and the degree of foreign ownership within the Ontario for-hire trucking industry.
2. The Ministry report its finding and recommendations to the Government.

### PART III - CHAPTER 5

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16. Source: Ministry of Transportation and Communications, Highway Carrier Licensing Office Statistics 1975.
17. Op Cit., Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 1, Page 59.
18. Source: Ministry of Transportation and Communications, Public Commercial Vehicle Computer Program, January 1977.
19. Op Cit, Ontario Trucking Association's Original Brief and Appendices.

Figure 1 Operating Revenues of Canadian Domiciled For-Hire Carriers Engaged in Freight Transportation.

Figure 2 Operating Revenues of Canadian Domiciled Carriers Engaged in For-Hire Freight Transportation by Mode of Transport.

## CHAPTER 6

### CARTAGE

#### 6.1 Definition of Cartage & Introduction

The Committee uses the term "cartage" to mean a for-hire transportation service which is limited in its operation to highly populated areas which are often found within municipal boundaries. In other words, urban or municipal for-hire trucking. Cartage would, as defined be distinct from over the highway or inter-city transport:

Cartage is a local activity. It takes place within one urban business community. Within a business community there may be said to be a relatively constant flow of cartage traffic. This flow takes place over a large number of routes, with delivery trips beginning and terminating at many points in the community. Licensing and regulations of cartage has historically (in Ontario) been left to the municipalities...

Intercity trucking is essentially inter-urban cartage. It takes place between business communities. Generally, only a few carriers operate between communities. The flow of traffic is not continuous. The activity takes place over relatively few routes -- mainly the highways connecting the business communities. Intercity cartage has been regulated by the provincial government through the Ontario Highway Transport Board for about 40 years....

Except for transportation of goods within an urban zone, or the transportation of certain excluded farm or forest products, there can be no operation of a commercial vehicle on a highway for compensation, without a Public Commercial (P.C.V.) Licence...

Most cartage operators serving a local municipality, if regulated at all, must obtain an operating license from the municipality. The license really amounts to a business

tax, levied by local authorities as a revenue measure for use of the streets - a vehicle tag fee. However, there are exceptions, such as Metropolitan Toronto and a handful of municipalities, which require evidence of good character and financial strength on the part of the applicant before a license is issued... <sup>1</sup>

The concentration of industry in the populated portions of Southern Ontario has created a situation which needs attention. There are instances where municipalities adjoin, and the legal boundary may impose an impediment to the natural flow of traffic. These exist within single regional municipalities such as Kitchener and Waterloo and within and between adjoining regional municipalities such as Hamilton, Wentworth and Halton. They also exist inter-provincially such as between Ottawa and Hull, and internationally such as between Windsor and Detroit.

The Public Commercial Vehicle Act exempts the transportation of goods within an "urban zone". That term is defined as "an area consisting of one urban municipality and lands adjacent thereto and within a distance of three miles therefrom, but does not include any part of any other urban municipality".

Problems associated with local cartage are many and varied, but the Committee's interest is primarily twofold:

1. The manner in which cartage should be regulated, and
2. The manner in which local cartage systems are integrated with the entire goods movement process, both in terms of real experience and planning by governmental groups. <sup>2</sup>

There are two types of for-hire goods movement that must be examined in the context of the cartage question. Those are:

1. local cartage which takes place entirely within municipalities or urban areas,
2. intra-regional trucking which takes place between constituent municipalities which are contained within a Regional Municipality.<sup>3</sup>

The situation is made more complex by the identification of yet another type of cartage operation; that is, cartage within large urban areas where there are multiple local municipalities and more than one Regional Municipality each with some claim to jurisdiction.

One study correctly put the question in its proper context by stating that the issues which surround cartage operation are jurisdictional and do not relate to the necessity of entry control.

The noted study concluded:

It is not practical to try to deal with the question of urban zone expansion until the jurisdictional questions on intra-regional transport are resolved. When they have been resolved, however, we expect that an administrative resolution to the problem will be evident.<sup>4</sup>

The regulation of transportation within regional municipalities, cities, towns and villages has received considerable attention. The Committee communicated with all of the regional municipalities and held hearings to hear their views.

Not all the Regions wished to testify. The Regional Municipality of Waterloo took the most active part, testifying before the Committee both in London and in Toronto.



## '6.2 The Submissions

The main proponent both before and during the Committee of further licensing powers for Regional Municipalities was the Regional Municipality of Waterloo. Other Regional Municipalities making presentations expressed no particular interest in assuming further controls. For example:

The RM\* of Sudbury Stated:

The general consensus amongst the area municipalities and the Regional Municipality is that the present system of licensing should be retained, although two of the municipalities would favour more Regional involvement in local licensing. The RM itself however, does not advocate that it be empowered to assume any regulatory authority over cartage licensing at the Regional level. <sup>5</sup>

Municipal officials indicated that 3 of the 7 area municipalities now licensed carters. The licensing did not contemplate entry controls, but was a straight registration scheme. Very few licences are issued.

\* Regional Municipality has been shortened to "RM".

The RM of York attended Committee hearings but made no proposals.

The RM of Ottawa-Carleton acknowledged the Committee's invitation for comments, but made no submission.

The RM of Niagara similarly made no submission, and commented only:

None of the former local municipalities and none of the present area municipalities have issued licences in this respect.<sup>6</sup>

The RM of Halton made written submission to the Committee and stated in part:

As you are already aware, there are four municipalities in the Region of Halton...

Only the City of Burlington and the Town of Oakville license cartage companies and vehicles...

The Towns of Halton Hills and Milton do not have licensing by-laws for cartage...

It is difficult to look at cartage licenses in municipalities solely as a transportation function. We have to consider them as part of the licensing function which involves numerous other licenses. The transfer of any or all licensing to the regional level would mean that many businesses where licenses are not now required would require them. This would create additional personal costs for individuals involved as well as the cost of enforcement requirements which do not exist at present. (All area municipalities do not have similar licensing provisions). While the problem may be regarded as an urban and rural situation, I do not believe this is entirely the case. The need to regulate and license certain trades and services is probably more prevalent in the densely populated urban areas but on the other hand, there are some needs for licensing in the smaller urban rural towns. In other words, because of the nature of the municipality, licensing may or may not be required. Imposition of licensing at the regional level does not appear to be a practical solution.

Notwithstanding, we do see the need for licensing cartage companies over a wider level than at present but for the reasons stated, the regional municipality need not necessarily be the most appropriate agency to do so. Perhaps this authority should be completely removed from the municipal level and trucking licenses required by the Province be expanded to include cartage company operation. There are many features of such a plan which appear beneficial. There would certainly not be the same hit-and-miss licensing that occurs at present.<sup>7</sup>

The RM of Hamilton-Wentworth appeared before the Committee.

Of its area municipalities only two, Hamilton and Stoney Creek have licensing by-laws. These by-laws provide for licence issuing, without controls over entry and operation. The RM evinced no interest in a further role, and was satisfied with the status quo. The Region will continue to coordinate activities of the area municipalities but seeks no further control at this time.<sup>8</sup>

The RM of Peel responded in written form, and appeared before the Committee. The main interest was not in the regulation of cartage or the question of jurisdiction, but in environmental concerns. The RM stated:

That the Select Committee on Highway Transportation of Goods consider and make recommendations to:

1. provide controls in legislation related to motor vehicle operation with respect to:
  - a) Noise
  - b) Engine Emission
  - c) Vibration
  - d) Load Security
  - e) Safe Operation
2. provide incentives to encourage operation and maintenance of vehicles in a quiet, clean and efficient manner;

3. include noise limits which become increasingly stringent over time, forcing the elimination of excessively noisy vehicles from the truck fleet, through earlier than normal replacement or retrofitting of quieter mufflers or other noisy equipment;
4. eliminate tire types which are excessively noisy during the period from March 1st to October 31st of each year.<sup>9</sup>

The Committee notes the Region of Peel's Trucking Study, Phase 1, and commends the Region and the Ministry of Transportation and Communications for its thoroughness. It was designed "to assess truck movements within the Region leading to a policy on truck route legislation".<sup>10</sup>

The RM of Durham evinced yet another interest in the cartage question. Simply stated, the Region's brief in both written and oral testimony held out the following:

Presently all intermunicipal for-hire trucking is regulated by the Province through the Ontario Highway Transport Board. Licensing decisions are made by the Board in accordance with The Public Commercial Vehicle Act and The Public Vehicles Act. The Board requires that proposed trucking services be "necessary and desirable in the public interest". In addition the Ontario Highway Transport Board requires that trucking rates be filed with the Board...

Local cartage of goods totally within single urban areas has traditionally been regulated by municipalities. Often the trucking licenses constitute little more than a business tax.

It is our understanding that the Town of Pickering is the only area municipality within the Durham Region which controls the local cartage industry through licensing. These local trucking services do not have to prove that they are "necessary and desirable"...



It seems that the inadequacies in present trucking regulation may be alleviated through the creation of urban cartage zones, where necessary. These zones should be defined by the Ontario Highway Transport Board in accordance with generally accepted criteria and with the agreement of the affected regional and area municipalities. The limits of the areas would not necessarily follow municipal boundaries. In areas such as Kitchener-Waterloo-Cambridge, the area may be defined as all or parts of those three adjacent area municipalities. When these zones have been determined all local cartage operations within each zone should be regulated only by local authorities. In areas where regional governments exist, these bodies may be the appropriate licencing body. The creation of an urban cartage zone within the Region of Durham is not necessary at the present time as there do not appear to be any local cartage problems...

It is our belief that cartage licencing should in all cases involve the tests of necessity and public convenience. Furthermore, we feel that the licencing authority should not control trucking rates as is done in the Province of Quebec, although it seems beneficial that trucking rates should be filed with the authority...

Since 1960 Metropolitan Toronto Cartage operators have applied to the Ontario Highway Transport Board for permission to extend their services outside the boundaries of Metropolitan Toronto...

The Board has permitted these service extensions west of Toronto, north of Toronto and this year east of Toronto to serve the Town of Pickering and the Town of Ajax. The effect of this last board decision is to make these areas more attractive for industries wishing to locate within the Region of Durham...

It is stated in provincial strategy and regional policy that the Oshawa - Whitby area is to become the focal point of the region. To this end significant amounts of industrial and commercial economic activity must be attracted to the Oshawa - Whitby area. One significant factor for industries wishing to locate within the Region of Durham is the cost of shipping goods to the Metropolitan Toronto cartage zone. To this end the Region of Durham requests provincial authorities to include the City of Oshawa and the Town of Whitby within the Metropolitan Toronto cartage zone.<sup>11</sup>

The Municipality of Metropolitan Toronto, the Regional Municipality of Haldimand - Norfolk, and the District of Muskoka did not submit formal comments to the Committee.

It can be seen that interest in jurisdiction and need for cartage control varies widely amongst the Regional Municipalities of the Province. The interest where it exists arises for varied and different reasons.

It is logical that this is the case, and the Committee is not critical of those Regional Municipalities which do not wish to extend their control over cartage operations. Each regional area is different - different in terms of population, size, concentration and make-up; in terms of industrial base and geographic areas. The road systems within each are different in length, coverage and condition. It is only proper that those differences reflect themselves in different views.

The Committee recognizes these special and differing interests and makes recommendations thereon. The Regional Municipality of Waterloo however, has brought one issue to the people of Ontario which requires special attention. As a result, the Committee dealt with that Region's views separately.

### 6.3 The Regional Municipality of Waterloo

The Regional Municipality of Waterloo stated in its initial brief to the Committee in part:

The Regional Municipality of Waterloo has the following legislative authority for licensing within one or more Area Municipalities within the Regional Municipality of Waterloo.

1. Notwithstanding Section 184, the provisions of paragraphs 1 and 6 of Section 377 and Section 378 of the Municipal Act do not apply to any area municipality.
2. The Regional Council may pass by-laws applicable to one or more area municipalities:
  - A. For licensing, regulating and governing teamsters, carters, draymen, owners and drivers of cabs, buses, motor or other vehicles used for hire or any class or classes thereof; for establishing the rates or fares to be charged by the owners or drivers of such vehicles for the conveyance of goods or passengers either wholly within an area municipality or to any point not more than three miles beyond its limits, and for providing for the collection of such rates or fares; for limiting the number of cabs, buses, motor or other vehicles used for hire, or any class or classes thereof, and for revoking any such licence.
  - B. For requiring any or all persons mentioned in paragraph 1 to provide public liability, property damage, cargo or other insurance in the form and to the amounts of coverage prescribed in the by-law and, providing that where such insurance is not so provided, the Regional Council may refuse, refuse to renew or revoke any licence issued under paragraph 1...

The present licensing authority with respect to cartage permits the licensing in one or more of the area municipalities within the Region of Waterloo. The licensing provision permits the movement of cartage within the various Licencing classes, from one point in an area municipality to another point in that same area municipality. It does not permit cartage from one area municipality into another area municipality. This type of inter-urban movement is regulated under The Public Commercial Vehicles Act and licenses granted by the Ontario Highway Transport Board, e.g., an individual who has obtained a cartage licence in a particular class for the area municipality of Kitchener and the area municipality of Cambridge, may transport freight from one point in Kitchener to another

point in Kitchener and similarly from one point in Cambridge to another point in Cambridge. The individual so licensed, is not able to transport goods from one point in Kitchener to a point in Cambridge. As noted, this would require a licence under The Public Commercial Vehicles Act. It is, therefore, requisite on a cartage owner, if he wishes to transport goods within the area municipality of Kitchener and within the area municipality of Cambridge and between the two municipalities, to obtain not only Regional Licenses but also a licence, as indicated, from the Ontario Highway Transport Board...

The duplication of licensing requirements within the Region promotes confusion not only with those individuals involved in the cartage business, but to the regulatory agencies as well. Many situations exist as was explained in an example above whereby an individual is licensed in a number of the seven area municipalities of the Region and not licensed under The P.C.V. Act to travel between them. This situation is magnified considerably when you consider the highly developed corridor of Waterloo-Kitchener-Cambridge. In these areas boundaries between the municipalities are in most instances undefinable. A further factor is the location of major shopping centres on the boundaries between the three municipalities. The classic example of this situation is a large Regional Shopping Centre located almost on the boundary between the City of Cambridge and the City of Kitchener. The numerous small parcel pick-up operations that service the numerous stores in this centre are required to have a Regional Licence to deliver goods within the City of Cambridge and within the City of Kitchener; and at the same time are required to have a licence under The Public Commercial Vehicles Act to deliver goods from the City of Kitchener to the City of Cambridge. Numerous examples could be given of the problem involved with this kind of situation...

The Council of the Regional Municipality of Waterloo has indicated and has requested that the Region of Waterloo be given P.C.V. Act Licensing Authority within the boundaries of the Regional Municipality of Waterloo.



It has been suggested that legislative authority similar to that contained in the Municipality of Metropolitan Toronto Act, which reads as follows would be appropriate, "109 - (1) For the purposes of The Public Vehicles Act and the regulations with respect to registration fees under The Highway Traffic Act, the Metropolitan Area shall be deemed to be one urban municipality and, for the purpose of The Public Commercial Vehicles Act, the Metropolitan Area shall be deemed to be one urban zone...<sup>2</sup>

The Regional Municipality went on to propose a specific program of licensing, under the subject of licence class, need, character, financial responsibility, penalties for violations and enforcement. Both the Regional Cartage Association and the Greater Waterloo Aggregate Haulers Associations supported the principle of Regional licensing being proposed.

As of September 1976, the Regional Municipality had licensed 422 cartage vehicles to 130 operators. The area municipalities of Cambridge, Kitchener and Waterloo have proportionately more authorized operators to serve them than are licensed for the other four municipalities. The respective numbers are 113, 129, and 109. Thus, while 544 authorizations existed within the Region, some 65% were authorized in these three area municipalities.<sup>13</sup>

This figure is substantially less than that quoted by the consultants for the Ministry of Transportation and Communications which stated:

some 90% of the cartage licenses in the Region of Waterloo are issued for the Municipalities of Cambridge, Kitchener and Waterloo.<sup>14</sup>

The Regional Municipality submitted a further brief to the Committee which stated in part:

It appears that a great deal of misunderstanding exists with respect to this request.

The intention is to simplify our own licensing authority so that an individual will not have to apply for eight licenses to conduct his business. Should a carter wish to transport goods from the Region to any other point in Ontario he will most definitely be required to obtain his approval from the Ontario Highway Transport Board.

A careful study of the geographical make-up of our Region will show the "common sense" approach to this aspect of licensing. With the interconnecting network of regional roads it at times becomes extremely difficult, in the rural areas, to be sure just within what township an individual happens to be at a particular time.

Under the Regional Municipality of Waterloo Act and amending legislation we were in fact given a transfer of authority from the Ontario Highway Transport Board in a rather "backdoor approach"...

We are not trying to supplement nor remove Ministry of Transportation and Communications enforcement of cartage operations. We are simply trying to streamline what is at present a most confusing and time consuming licensing arrangement.<sup>15</sup>

#### 6.4 Metropolitan Toronto

Metropolitan Toronto is unique in the light of the foregoing discussion because first and foremost it is not a Regional Municipality in law. It is unique in terms of cartage because of the current provisions of The Municipality of Metropolitan Toronto Act which provide that "for the purpose of The Public Commercial Vehicles Act, the Metropolitan Area shall be deemed to be one urban zone".

The effect of the provision is that the Metropolitan Toronto Licensing Commission regulates cartage to a degree that the Municipality feels is warranted in and between all the area municipalities comprising Metropolitan Toronto. This is distinct from the Regional Municipality of Waterloo which has the authority to regulate within but not between each of its area municipalities. (Both are distinct from all other Regional Municipalities which have no authority in their Acts of Incorporation to regulate cartage. There, the responsibility is exercised by the area municipalities.)

The Metropolitan Toronto situation has been made even more unique because of the spillover of industry into neighbouring municipalities. To operate between Metropolitan Toronto and a neighbouring Municipality a carter would require a Public Commercial Vehicle licence. In the past, the Board has held hearings to deal with applications by groups of truckers wishing to serve a neighbouring industrial area and, has granted certificates to the entire group. As a result, an informal "commercial zone" has been established which now includes Ajax and Pickering south of Highway 7, the town of Markham (excluding the old village of Markham), the Township of Vaughan south of Carrville Road, Mississauga and the city of Brampton (excluding the old town of Brampton).

There is some confusion over the consequence of this urban zone. The "urban zone" now "established" has consequence only historically. Because the informal "commercial zone" approach has no statutory basis, any carrier not part of the initial group of applicants who seeks authority to provide service between urban zones within the commercial

zone must meet the standard test of public necessity and convenience. The presence of the Metropolitan Toronto urban cartage zone, as extended, therefore, has no significance in law and no implications as to an ongoing relaxation of entry controls.

An association of cartage operators in Metropolitan Toronto is not satisfied that the system in Toronto is optimum. That association stated in part:

It is easily demonstrated that during the past decade much industry has relocated outside the boundaries of Metropolitan Toronto, yet these same industries have continued to serve businesses within Metro Toronto to a very large extent. Much of the raw material for processing has to be transported from Metro, and much of the finished product is shipped into Metro. In order to serve these industries, cartage operators within Metro Toronto and the surrounding areas (Mississauga, Brampton, Vaughan, Markham, Pickering, Ajax) are forced to operate under dual licences, i.e. a Metro Cartage Licence and a P.C.V. "A" Licence for what is referred to as the expanded commercial zone (roughly those places named above).

The licensing of cartage operations within Metro Toronto is in the hands of the Metro Licensing Commission...

The Commission's staff of Inspectors are required to police many different activities...They tend to be overworked and therefore it is difficult, if not impossible, for them to do the thorough job of controlling the industry that they would prefer. The Commission tends to act more as a revenue producing agency rather than a policy agency. Because of the limitations of the Metro Toronto Licensing By-Law(88-69), obtaining a cartage licence in Toronto is mostly routine, provided that the necessary requirements stipulated in the By-Law have been met. There is no real requirement that the service proffered be either a public necessity or a convenience.

The Association recommends that the Ontario Highway Transport Board take over the licensing of all phases of goods movement by road in the Province of Ontario. It (The Ontario Highway Transport Board) is the recognized body within the Province with knowledge and experience to perform this service.



It is the contention of the Association that whilst Metro Toronto was unique in that it has many municipalities which are contiguous, a solution to the licensing of cartage operations is required which might be equally applicable to other suitable localities within the Province...

We suggest that:

1. There be set up within The Public Commercial Vehicles Act, a class of licenses known as "Commercial Zone Cartage Licenses".
2. The Licenses be made available on a public necessity and convenience basis.
3. That the boundaries for each commercial zone be defined by the Ontario Highway Transport Board in consultation with interested municipalities, shippers, truckers and/or other parties.
4. That the Ontario Highway Transport Board have the power to adjust commercial boundaries either of their own volition, or upon receiving submissions of interested municipalities, shippers, truckers, and/or other parties.
5. That upon a commercial zone being redefined, all parties that currently have licensing in the existing zone, be automatically granted rights to the enlarged zone.
6. That the fees for a Public Commercial Vehicles Commercial Zone Cartage Licence be similar to those currently paid for a Metro Toronto Cartage Licence. <sup>16</sup>

#### 6.5 The United States

The Interstate Commerce Commission had the authority to define urban zones for a considerable length of time. The Commission's past involvement is reviewed below:

Section 203 (b) (8) of The Interstate Commerce Act exempts from economic regulation the transportation of persons and property in interstate or foreign commerce when it is "...wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality..."

Congress intended to exempt motor carrier transportation in urban areas from regulation by this Commission, but the geographic extent of the "commercial zone" exemption was not specified in The Act. The responsibility for making such a determination was left to the Commission as one of its duties in administering the provisions of The Act...

Recognizing that a commercial zone exists about every municipality in the United States, the sheer impossibility of specifically defining both the commercial zone limits at every city and the terminal area of each carrier at each of its authorized service points dictated the necessity of formulating some general guidelines in this area...

The Commission promulgated regulations establishing commercial zones in Ex Parte No. MC-37, which have been published. Under the formula established there the commercial zone includes:

- a) The municipality itself, called the base municipality;
- b) All municipalities which are contiguous to the base municipality.
- c) All other municipalities and all unincorporated areas adjacent to the base municipality as follows:
  - 1. When the base municipality has a population less than 2,500 all unincorporated areas within 2 miles of its corporate limits and all of any other municipality any part of which is within 2 miles of the corporate limits of the base municipality.
  - 2. When population 2,500 but less than 25,000 - 3 miles.
  - 3. When population 25,000 but less than 100,000 - 4 miles.
  - 4. When population 100,000 or more - 5 miles.

- d) All municipalities wholly surrounded, or so surrounded except for a water boundary, by the base municipality, by any municipality contiguous thereto, or by any municipality adjacent thereto, which is included in the commercial zone of such base municipality under provisions of (c) above.

The basis for using a "population mileage" approach was stated in:

Commercial Zones, supra, 46 M.C.C. at 685, as follows:

The limits of the commercial zone of each municipality should be determined in a manner to include, in addition to the area within its corporate limits, all other places or areas which, whether separately incorporated or not, are integral parts of the same business community, and to exclude all places and areas transportation between which and the base municipality is intercity in character.

The direction of the urban developments beyond the corporate limits of any particular municipality may, of course, be influenced in some instances by geographic considerations which may at some points require individual consideration but, generally speaking, transportation requirements, the availability of other public utilities, proximity to churches and schools, and similar considerations, tend to distribute such developments, both industrial and residential, somewhat equally in all directions about their respective base municipalities. In other words, the commercial zones adjacent to most municipalities contemplated by section 203 (b) (8), appear to be susceptible of reasonably accurate definition by the delineation of lines varying distances beyond the corporate limits, the distance used in any particular instance being dependent upon the population of the base municipality.

Since the promulgation of the population-mileage formula, petitions have been filed to determine specifically 43 commercial zones. The usual case involves efforts by an interested party or parties to have an industrial park or a similar commercial location included in the commercial zone or a particular city. When making such a determination, the Commission customarily states that its function consists simply of ascertaining the limits of an area which already exists as an economic fact without being influenced by the

effect which such a determination might have on individuals and without being concerned as to the adequacy or inadequacy of existing transportation services, (see Cleveland, Ohio Commercial Zone). The following questions have been deemed relevant to such a determination: (1) where do industrial establishments in the area proposed for inclusion look for their business needs and public utilities? (2) where do residents of the proposed area look for their cultural, social, recreational, educational, and medical needs? (3) is the industrial development of the area situated outside of the municipality related to the economic and social life of the base municipality? (4) have many firms in the surrounding area relocated from the base municipality? and, (5) is there a two-way traffic in employees, service, and goods between the surrounding area and the base municipality?<sup>17</sup>

The Motor Carrier Reform Act, was introduced by President Ford to Congress in 1975. As earlier stated, The Act has not been passed.

Two provisions of that Bill are relevant to this particular discussion. The United States Department of Transportation stated regarding sections 5 and 6 of the Bill:

Commercial Zones. The Bill directs the I.C.C. to reform regulations dealing with commercial zone transportation, to eliminate unnecessarily restrictive practices and to improve procedures for making boundary changes within two years after enactment (Section 5).

New Plant. The Bill exempts service to or from any plant less than 5 years old from I.C.C. certification requirements. This will provide new plants with needed flexibility in meeting their transportation needs and eliminate the costly certification process. (Section 6).

The United States Department of Transportation supported this section in part by the following comments:



Since the commercial zone concept was first established, and the original zone boundaries first defined, significant changes have occurred in patterns of industrial growth and industrial traffic. A substantial amount of freight traffic now originates or terminates, or both, outside the commercial zone, while most freight terminals remain inside the zone. Further, most new industrial growth is occurring outside the zone. The resulting movement of freight in and out of one or more zones in order to pick up and deliver interstate shipments necessitates extra vehicle miles, extra transport time, additional exposure to accident, superfluous fuel consumption, additional air and noise pollution and unnecessary transportation costs.

The traditional theory adhered to by the Commission that the boundaries of a commercial zone must encompass areas which are commercially and economically a part of the base municipality must be reconsidered in light of present conditions. The continuing growth of industrial and other business areas outside of municipal boundaries requires that the Commission redefine commercial zones in a way consistent with today's economic realities...

DOT maintains that every index of "economic fact" leads to the conclusion that major expansion of the commercial zone is warranted.

It is anticipated that with freer entry to local movements and greater geographical scope of carriers' operating authority, competition will increase, providing shippers with more service options and lessening the need for private carriage...

Insofar as zone expansion permits increased operational efficiency through a reduction of interlining of TL traffic, service should be available at lower rates...

Since the expansion of the commercial zone is, in essence, an expansion of operating authority, it is anticipated that there will be an increased number of competitors vying for the available traffic and that the competition will result in an upgrading of service...

Since zone expansion will result in the automatic grant of new authority to carriers which presently hold authority to serve a more limited commercial zone, many applications for new authority will be rendered unnecessary...

However, insofar as shippers select private carriage of TL traffic for reasons related to speed and quality of service, zone expansion may encourage some users of private carriage to shift to regulated carriage.<sup>18</sup>

If for no other reason, this push for liberalization of commercial zones by the Department of Transport spurred the Interstate Commerce Commission to review its policies;

The Commission, on August 12, 1975, instituted a rule-making proceeding entitled Ex Parte No. MC-37 (Sub-No. 26) which proposed a new population-mileage formula which enlarged existing commercial zones. The proposed formula is as follows:

COMMERCIAL ZONES

<u>POPULATION OF BASE MUNICIPALITY</u>	<u>MILEAGE PROPOSED (measured from municipal limits)</u>	<u>PRESENT MILES</u>
less than 2,500	3 miles	2 miles
2,500 - 24,999	4 miles	3 miles
25,000 - 99,999	6 miles	4 miles
100,000 - 199,999	8 miles	5 miles
200,000 - 499,999	10 miles	5 miles
500,000 - 999,999	15 miles	5 miles
1 million and up	20 miles	5 miles

TERMINAL AREAS OF UNINCORPORATED AREAS

	<u>PROPOSED</u>	<u>PRESENT</u>
less than 2,500	3	2.5
2,500 - 24,999	4	4
25,000 and up	6	5.5

The report did not adopt proposals to base commercial zones on mileage from city centers (rather than from boundaries) and to increase the size of the zones for cities adjacent to geographical barriers. The first was criticized as ignoring topography; the second was believed impracticable.<sup>19</sup>

Therefore, in reaction to The Motor Carrier Reform Act's provisions, the Commission stated:

Section 5 of the MCRA requires the Commission to reform its regulations as to commercial zones, taking into consideration certain criteria. The Commission is currently undertaking such a reform, and has committed itself to an expansion of existing commercial zones and thus we view section 5 as unnecessary...

We believe that the new formulae being developed...tested and refined after a full Administrative Procedure Act rule-making proceeding and based on evidence distilled from an extensive public record, will be entirely adequate. No further legislation is needed. <sup>20</sup>

The Interstate Commerce Commission has since adopted the formula for urban zones proposed in the Interim Report and expanded in the final report of Ex Parte MC-37 Sub No. 26, decided on December 17, 1976. The Commission's decision has however been appealed although as of the date of writing, there has not been any court order staying the decision.

#### 6.6 Cartage and Urban Planning

In all its discussions on cartage within built-up urban areas, the Committee was struck by the general lack of coordination of planning for the needs of trucks. Urban mobility, or lack of it has long been a subject of discussion as congestion has an impact on vehicle costs, the environment, road safety and the state of mind of urban citizenry. Congestion also has its effects on the economics of moving goods into and out of major urban areas. As congestion increases, loading and unloading takes longer and so does travel time. Transportation costs must escalate to those who need goods.

6.6.1      A 1970 Study and Observations of the  
Characteristics of Urban Freight Movements

A 1970 study was designed to:

....examine the characteristics of goods movement (by relating truck stops to the land uses which generated them) with the purpose of understanding the contributions of selected elements to the number and duration of truck stops. From the findings of this examination, practical changes in central area goods movement which could reduce truck stops numbers (or the effects of these stops)

Amongst the many problems noted were:

....the absence, or poor quality, of loading facilities was one of the principal problems that reduce the efficiency of goods movement by truck within the central area. Congestion accompanied the low facility quality as trucks lined up to pick-up and deliver freight (in a study by Smith Transport, congestion added 82 cents to the per-mile cost of running a straight truck in downtown Toronto.) Other problems included automobiles blocking truck facilities, shipper delays, and incorrectly-addressed bills of lading.

Some characteristics of the goods movement process were noted as:

....many shipments generated within the central area are small. Shipments of office supplies and foodstuffs, in particular, were found to often contain 100 pounds or less and 5 pieces or less. Shipment sizes appeared to vary with the following:

- the type of goods being shipped,
- the business type and size of the activity generating the shipment,
- the personnel in charge of shipping goods,
- the amount of storage space available,
- the origin/destination of the shipment,
- the location of the generating activity within the central area, 21



#### 6.6.2 The 1970 Study and Possible Policy Directions

That study drew the following conclusions:

Land use in the central areas of Canadian cities is intensifying as high-rise structures, particularly office buildings, are constructed. The intensification of land use will mean increased movement of goods. If goods movement continues according to present patterns, increases in the numbers of truck stops generated will result. Increases in truck stop generation can only lead to amplification of the problems now facing goods movement. To avoid the heightening of goods movement problems, methods must be found to reduce the need for more truck stops and/or the duration of truck stops. Six methods by which these reductions could be accomplished were examined.

##### Technological and Land-Use Changes

It was concluded that technological changes and land-use changes (associated with the encouraged decentralization of certain central area functions) designed to reduce truck stop numbers were not as yet practical.

##### Timing Changes

Changes in the timing of truck stops could reduce the congestion at the present peak periods. A more even distribution of truck stops could be achieved if private firms would space their deliveries throughout the day (rather than concentrate them in the morning) and if for-hire firms could make their core (The most congested part of the central area) deliveries and pick-ups in the afternoon. The practicality of this suggestion needs to be studied.

A change to night work by trucking firms was basically rejected because of the problems which would be experienced by central area businesses in the staffing of shipping departments.

##### Truck Facility Changes

It was concluded that, in the long-range, the duration of truck stops could be reduced to the technical minimum (the least time required to manoeuvre and transfer goods) by increasing the quality and the usage of central area truck facilities. It was recommended that municipal by-laws be improved to take account of land-use differences in the intensity of truck stop generation and in

the types of required truck facilities. In addition, it was recommended that the designers of truck facilities consider the total truck traffic generated at a building and ensure the provision of facilities by which all trucks can be parked out of the traffic flow.

#### Rate Structure Changes

A study to determine the implications and feasibility of changes in the rate structure of for-hire firms operating in the central area was suggested. Rate changes could take account of the quality of loading facilities and shipping assistance provided by customers or could be tied to the duration of stops for the pick-up and delivery of goods.

#### Shipment Size Changes

To reduce the duration of stops at office buildings it was recommended that the management of buildings be authorized to accept delivery of, or to despatch, shipments generated by the activities within buildings. To achieve consolidation of shipments and reduce stop numbers, tenants who combine small orders into fewer large ones could be offered reductions in the costs of goods by private trucking firms and in the costs of transport by for-hire firms. Storage space for goods until the tenant needed them would be provided within the buildings, preferably in proximity to the loading facilities.

Private firms are chiefly responsible for the delivery of office supplies and food-stuffs--the goods which this study found are transported in small shipments and offer most opportunity for consolidation. It was suggested that some private firms, particularly those distributing office supplies and food-stuffs, consider the possibility of amalgamating their trucking operations. Amalgamation could lead to larger shipment sizes and more efficient goods movement through the reduction of truck stop numbers.

The establishment of a consolidation terminal to serve for-hire firms at the edge of the central area has frequently been recommended. To this study, the goods movement advantages of such a terminal are evident. However, without information on the economics and the implications of such a scheme it is difficult to be conclusive.

Any consolidation of shipments must be accompanied by improved loading facilities since larger shipments probably would mean the utilization of heavier vehicles and the need for loading docks to assist goods-handling. The consolidation of shipments, therefore, must be complemented by better zoning by-laws which require the inclusion of high-quality loading facilities in the construction of new buildings.<sup>22</sup>

#### 6.6.3 The Committee's Observations

Through the years, municipalities at all levels have become somewhat more aware of the problems with moving goods into and out of the municipal core. Considerable funds have been spent by some in studying the problems, resulting most often in proposals for additions or changes to the roadway infrastructure or, for the designation of truck routes within the municipal area.

It is the Committee's distinct impression however, that the majority of municipalities have not yet come to grips with the economics of goods movement as a problem which needs solution. Large amounts of money have been spent at all levels of government to study the problems associated with moving people to and from city centres. Goods movement has been relegated a much less significant role in recent years. The Committee does not quarrel with these study and infrastructure priorities, however, it cautions that transportation within major urban areas must be viewed as a

total package. If goods cannot flow into and out of city centres, efficiently, safely and dependably, then it will not matter how many people can be moved in and out.

The Committee notes that the much discussed railway relocation study program is no longer to be funded by the federal government. The federal government vacillated on the provision of its share of study funds much to the detriment of the provinces and of those municipalities in the costs of whose studies Ontario had agreed to participate. While the prime motivation to examine rail relocation may have been environmental, these studies might well have provided impetus to assess the needs of the goods movement process. A real opportunity to examine urban transportation comprehensively, including the relationships between goods and people and between truck, rail, bus and water modes has apparently been lost.

The Ministry of Transportation and Communications, under authority of The Public Transportation and Highway Improvement Act, does share in the costs of transportation planning studies by municipalities. In some cases, these studies involve a look at trucks as an adjunct to the whole transportation process. In some cases, whole studies are dedicated to the physical aspects of truck movements. The Committee has noted the Phase 1 study for the Region of Peel and the activities in this field by the Region



of Durham. However, to the Committee's knowledge, there has never been a study by a municipality funded by the province designed to look comprehensively at the economics of goods movement in its broadest terms and involving all the planning agencies which individually must consider the fact of urban truck transportation. Were such a study initiated, there is some doubt as to whether the province would fund it in whole or in part.

The Ministry has however, recently been examining the factors which one would need to examine if a meaningful study of goods movement in urban areas was to be undertaken. The fact that two large volumes have been produced reflecting only on a study design rather than on a study itself, underlines that the state of the art of urban freight movements is very much in its infancy.

#### 6.6.4 A 1976 Overview of Urban Freight

In a 1976 report, "An Overview of Freight Systems in the Context of Urban Planning", the Ministry's consultant reviewed past literature and as seems to be so common in freight movements generally, found a relative lack of significant data.

The report was introduced by the following remarks:

Transport involves the movement of both people and goods. The modern industrial society could not exist without the massive flow of commodities of all descriptions between and within cities, regions and nations. Urban areas in particular

rely on freight facilities to import food, raw materials, consumer goods and the like, to export the region's products, and to allow the movement of necessary commodities within the region....One person has succinctly summarized the importance of freight facilities to urban regions in the title of one of his papers -- "The Care and Feeding of an Urban Area".

Yet by comparison with urban passenger travel, urban goods movement has been virtually ignored by transportation planning agencies. Innumerable surveys of urban passenger flow have been conducted, and sophisticated techniques have been developed to analyse and project these flows and to evaluate the worth of investment in facilities to cater for them. The contrast with urban goods transport is striking. Very little is known about urban freight generation and patterns of commodity flow. There are no robust theories of urban freight movement, nor are there clear guidelines related to planning for urban freight.

This neglect of urban freight has been as true of Ontario as elsewhere. In recognition of this deficiency in the systems planning process, the question arises as to whether government should have a more active involvement in urban freight analysis. Therefore, without in any way pre-judging the appropriate involvement, it was decided that the Ministry of Transportation and Communications would initiate a Study Design for urban freight. The Study Design, of which this report is a part, is intended to explore the basic issues in urban freight and to prepare a foundation for possible subsequent investigations of freight systems. The Study Design is thus partly an end in itself, but at the same time, it may also be the first phase of a possible continuing program...

If any transportation planning agency is to play a more positive role in urban freight, and move to a position where it can explicitly take freight considerations into account in its urban transportation systems planning procedures, it can only do so if it has a much greater understanding of the nature of urban freight, and the interactions between freight systems and other urban systems.<sup>23</sup>

As did the previously referenced 1970 study, this 1976 study attempted to put the question of urban freight movement in context by drawing a profile of urban goods flow as it existed.

Of particular interest were the following introductory comments:

....A study conducted for the U.S. Urban Mass Transportation Administration concluded that "the existing body of information is sparse and fragmented....this situation may constitute the most pressing of the identifiable problems in the urban goods movement picture" (Simons et al, 1974)...

It is not possible to present a comprehensive profile of freight in urban areas. Nor is it possible to compare different urban areas; either surveys have not been carried out, or if they have they often use a different data base, and present their results in inconsistent ways.

The profile generated in the report included the following details with regard to the economic significance of urban freight:

There have been few studies of the economic significance of urban freight. A major difficulty is to estimate the contribution of privately owned trucks. In national accounting, the cost of operation of these trucks is allocated to their industry of ownership. For example, costs incurred by a retailer in delivering goods in his own trucks are allocated to the retailing sector not the transport sector. While this is understandable given the purposes for which national accounts are prepared, it means that the total cost of urban freight cannot be isolated. Similarly, the for-hire trucking industry, which is included in the transport sector, is not disaggregated into urban and non-urban operations in the national accounts.

For these reasons, estimates of the economic significance of urban freight must rely on studies which have been specially carried out for that purpose.

In a study of urban transport efficiency in Canada carried out for the Ministry of Transport (1971) the total costs of person transport and goods transport were estimated for three representative cities. The results, in 1966 dollars per head of population, were as follows:

	<u>PERSON TRANSPORT</u>	<u>GOODS TRANSPORT</u>	<u>ACCESS ROADS</u>	<u>TOTAL URBAN TRANSPORT</u>
City A (Pop. 125,000)	226	123	15	\$364
City B (Pop. 500,000)	230	173	15	\$418
City C (Pop. 2,000,000)	239	371	15	\$625
Canadian National Urban	234	242	15	\$491

There are three important points to be made from this table. Firstly, the absolute cost of urban freight is significant -- 6% of income in the smaller city and 18% of income in the larger city. Secondly, the total cost of urban goods transport in Canadian cities is nearly as much as the total cost of urban person transport. Thirdly, while the cost per head of person movement does not vary very much with city size, the cost of urban goods increases significantly as the size of the city increases (of course, the reverse may be true for inter-city freight, with the result that total transport costs may be more comparable)...

The proportion of the price of a commodity which is attributable to urban transport is not easily estimated. However, some estimates have been made, the most notable of which is probably that of the U.S. Department of Transportation (1972), as part of the National Transportation Report. The estimates of the percentage of the final demand price which was attributable to domestic intercity freight, local for-hire trucking and local private trucking, for selected sectors, is shown in the following table:



<u>SECTOR</u>	<u>DOMESTIC INTER-CITY FREIGHT</u>	<u>LOCAL FOR HIRE TRUCKING</u>	<u>LOCAL PRIVATE TRUCKING</u>	<u>TOTAL</u>
Communications	0.7	0.1	0.3	1.1%
Electrical Machinery	3.2	0.3	0.4	3.9%
Textiles & Apparel	4.4	0.4	0.6	5.4%
Food & Drugs	5.1	1.6	1.8	8.5%
Petroleum & Products	6.6	0.5	2.3	9.4%
Paper & Products	8.6	1.0	0.9	10.5%
Timber & Products	11.2	0.7	1.6	13.5%
Scrap Sales	16.1	0.0	0.6	16.7%
Coal Mining	17.5	0.1	2.6	20.2%
Gravel, Sand, Stone	41.6	22.6	12.5	76.7%

The table probably underestimates the proportion of costs incurred within urban areas. The inter-city freight element includes inter-city trucking operations and in many cases, these movements would include a sizable urban component which is not taken into account in this table.

Corroborating data on the proportion of final costs which are due to transport has been provided for the British economy by Edwards (1970). It was estimated that at least 9% of the total cost of producing and distributing goods in Britain is due to transport. For individual sectors, the proportion varied from a low of 1.1% in the case of clock production to a high of 40% for stone and slate quarrying. In most sectors, transport costs were between 2% and 10% of net output. (These data are not comparable with the American data above; the British data relate to the cost of production, and do not include transport to the consumer, while the American data relate to final demand price, and include the cost of transport to the consumer).

In general then, it appears that perhaps 7% - 8% of the total cost of producing and distributing goods is, on average, due to transport. About half of this is attributable to costs incurred in transporting goods within urban areas. Goods with a high

ratio of value to bulk have a lower transport cost component (perhaps averaging 5% of the total cost of production), while goods with a low ratio of value to bulk, such as quarried products, have a much higher transport cost component.<sup>24</sup>

The study reviewed the major published works on the subject of urban freight but did not conduct new research of an empirical nature. This was not the purpose of the study.

The literature review and compilation of facts presented by the report form a useful base from which to work. To understand the nature of urban freight movements, excerpts from the report's discussion on,

- mode use
- truck types
- truck weights
- truck ownership
- numbers of trips per day
- distance and time travelled
- truck trip purposes

are attached as part I of Appendix R.

Significantly, the report went on to identify the "Actors and Institutions" in the urban freight process. It stated in part:

The first element of the freight system which requires definition is the actors and institutions involved in the freight process. The perceptions of the various actors, and the freight-related goals which they might possess significantly affect the way in which the freight task is carried out. A good example is the private truck operator - a business enterprise to whom transportation is a secondary activity. It has been noted above that these trucks are less heavily utilized than trucks owned by commercial for-hire carriers. A reason for this is almost certainly that many private owners see transport as an incidental part of their overall business operation and seek to carry it out with a minimum of inconvenience even if this means that their trucks are used on average for only a few hours per day.

Grundland, (1973) has defined five separate actors in the freight process - the operators, the users, the governing bodies, the representative bodies, and passenger carriers. The role and postulated goals of each are reviewed below.

The operators include vehicle operators and terminal operators. Vehicle operators might be divided into five categories; for-hire owner operated, for-hire corporate, private owner operated, private corporate and government. Each of these may have different freight related goals. The for-hire operators probably attempt to maximize vehicle earnings, while the private operator may subordinate this goal to other goals of the firm. Terminal operators include both those concerned with the urban - exurban interface (ports, airports, rail yards etc.) and those concerned also with intraurban deliveries. The goal in both cases is probably to maximize throughput.

The users of freight services function as shippers and receivers, and include commercial users (manufacturers, retailers, etc.) and domestic users (households). Shippers usually pay the direct cost of delivery, i.e. the receiver pays for the goods received into store. Thus the freight goal of the shipper is probably to minimize the costs involved in moving goods to the receiver. The receivers freight goal is probably also to minimize his perceived costs, but because the shipper pays the freight bill, the receiver may be more interested in factors such as reliability, regularity and service.

The governing bodies include all public agencies with functions related to urban freight. At the local and regional government level, these functions include land use planning, building approval, local road and traffic management, police and cartage licencing. At the Provincial level, the Provincial police, the provision of roads, the regulation of commercial vehicles, and the regulations governing drivers and vehicles are included. At the Federal level the Canadian Transport Commission is concerned with economic aspect of transportation policy and the Department of Labor with aspects of labor legislation. The "goals" of these various agencies are difficult to define explicitly, but they could probably be couched in terms of social benefits.

The representative bodies function on behalf of the interests of various actors within the system. They may represent particular industry groups and lobby on behalf of their members. Labor unions represent their members in seeking improved pay and conditions. In addition to their representing members interests, the various representative bodies provide an important means of communication between actors. This may be by formal means such as newsletters, or by informal means merely by providing opportunities for face to face contact between individuals.

The final group of actors identified by Grundland was the passenger carriers. These were included to emphasize that freight and passenger movement are both important parts of the transport task, and that there are conflicts between them, as well as potential benefits in terms of tradeoffs between the two.

To these five categories of actors might be added: the public (as an impactee affected by the freight process, and as the ultimate consumer of much freight), land and building developers who are responsible for much of the increase in freight generating activity, freight equipment manufacturers whose businesses depend on the viability of the urban freight industry, and the various modes of inter-city freight transportation.<sup>25</sup>

#### 6.6.5      A 1977 Basis for Further Action on Urban Freight Problems

As a furtherance to the quoted study above, the Ministry of Transportation and Communications produced a "Phase 2" volume to review the information needs relating to increasing the quantitative and qualitative understanding of the urban freight system.

The Ministry contemplates a Phase 3 Report to identify specific information needs and analysis tasks.



The Phase 2 Report "Basic Requirements for the Analysis of Urban Freight" identifies the major problems in urban freight as including:

- the efficiency of the movement
- street congestion
- loading and unloading facilities
- freight terminals
- noise and air pollution and
- urban structure

In a summary of opportunities for improving urban freight systems, the report identified seven categories or areas of option to deal with the noted problems. These were:

- improvements in freight technology
- changes in operating practices
- freight consolidation
- location and zoning of land use
- transport system improvements
- changes in regulations
- changes in the pricing structure

The discussion of each of these items is included as Part II of Appendix F.

The report concluded with the following comments:

It is useful to conclude this brief review of potential improvements to urban freight systems with an equally brief listing of the various policy instruments which are available to governments if they wish to become involved with urban freight improvements. Once again, this is only a list of available strategies, and no suggestions regarding economic, political or institutional feasibility are implied.

#### 1. Infrastructure Investment

Investment in specific urban freight-related facilities, such as consolidation terminals, as well as investment in urban transportation facilities for general use.

2. Taxation

The use of taxation as a policy instrument by increasing the costs of particular ways of conducting a transaction, thus making it less attractive, e.g., taxation of deliveries to discourage multiple deliveries.

3. Subsidization

The payment of a subsidy or bonus to encourage desirable ways of conducting a transaction, e.g., to subsidize private investment in handling facilities.

4. Regulation

The making of new or the reform of existing regulations with the specific intention of encouraging efficiency in urban freight.

5. Demonstration

Demonstration projects may be undertaken by governments as part of an applied research and development program. If successful, the project may be taken up and used in the private sector.

6. Technology Development

The development of new technology, involving fundamental research, particularly into technical or engineering aspects.

7. Public Ownership

Governments could participate directly in the urban freight process, by ownership of particular services.<sup>26</sup>

The report's discussion entitled, "A Preliminary Evaluation Scheme for Urban Freight" is also attached as Part III of Appendix R. This discussion was concluded by the following general comments:

It is clear that, in practice, an approach such as that outlined above, (i.e., assess proposals by determining how each would decrease total costs of urban freight transport) would be difficult to implement at this stage. The particular

cost elements which should be included in any particular analysis may not always be easy to identify, and in most cases it would not be possible to quantify.

However, the basic approach of identifying and weighting the tradeoffs between cost elements is sound. Thus, while for practical reasons a formal analysis using a cost-effectiveness or cost benefit approach is not feasible, a less formal approach along similar lines is possible. Initially, the approach would have to be non-quantitative, and consist essentially of a "balance-sheet" showing the positive and negative effects of any particular proposal. This at least would assist in focussing attention upon those elements which are critical in a formal evaluation process.

Such a "balance-sheet" approach is capable of being refined and adapted into a more quantitative evaluation scheme as numerical data, analysis techniques and a greater system understanding develop over time.

Thus, in summary, the evaluation scheme essentially involves taking all costs and impacts into account, and identifying the tradeoffs between the various cost elements...

The practical problems associated with the development of an evaluation scheme only serve to re-emphasize a central scheme of this whole study design -- that the first priority for a transportation planning agency in urban freight analysis is the development of much greater understanding of urban freight processes and problems.<sup>27</sup>

## 6.7 Conclusions

The movement of goods in urban areas is of critical importance to the future of Ontario's cities, the industries which locate.

there, and to the people who live and work within the urban environment.

There are two major areas of concern seen by the Committee, each of which will have to be faced by all levels of government over the next several years. Those two areas can be identified as:

1. Supply and Demand - governments have an interest in ensuring that there is sufficient supply of transportation services to meet the demands of the society and, that services provided are safe, corporately efficient and dependable.
2. An Efficiency of Movement - governments have an interest in planning infrastructure, and promoting design and development which will be conducive to efficient transportation movements.

The first area of concern can and should be approached through a rational, effective program of economic regulatory controls on the for-hire cartage firms wishing to operate within urban areas.

The second can and must be approached through rational planning of roadway networks, land use designations, traffic rules (truck routes, one way streets for example) and by inducements to industry to build and develop plants and offices to facilitate goods movement. Before a meaningful program can be developed to address this area of concern, quantification of policy options must be done. If this is to occur, all levels of government must recognize their responsibilities and assign a higher priority to urban freight problems.

The Committee recognizes that various segments of private industry and agencies of government do examine these questions. A decision to



locate an industry in a particular area necessarily involves the businessman in a consideration of freight transport services and capabilities in the area. Similarly, land use planning agencies and land zoning authorities must and do consider transportation availability and infrastructure. What is needed, is a comprehensive approach to urban freight problems and solutions.

#### 6.8 Recommendations

The Committee recommends that:

1. The Public Commercial Vehicles Act be amended to give effect to the following principles:
  - (i) the current definition of urban zone be continued.
  - (ii) a "commercial zone" be defined to the effect that it means an area consisting of all or part of two or more adjoining urban municipalities but does not include any area of any more than two Regional Municipalities and for the purpose Metropolitan Toronto shall be deemed a Regional Municipality.
  - (iii) the exemption from licensing requirements under The Public Commercial Vehicles Act be extended to include a person operating a commercial vehicle on a highway for the transportation for compensation of goods of another person where the transportation of goods is within an (a) urban zone as defined, or (b) a commercial zone, defined as proposed.
2. The Act be further amended to give effect to the principles that:
  - (i) (the limits of) all commercial zones will be defined in the regulations,

- (ii) a commercial zone may only be defined in future after a hearing held by the Ontario Highway Transport Board to hear applications respecting a definition of or an extension to a commercial zone,
  - (iii) any urban or regional municipality which licences cartage operators or operations may make application to define or extend a commercial zone and be a party to the hearing,
  - (iv) the Ministry of Transportation and Communications will be a party to any such hearing and other Ministries of the Ontario Government may be parties.
3. Where any commercial zone is established, the Ministry of the Treasury, Economics and Intergovernmental Affairs give favourable consideration to a request from a Regional Municipality to amend its Act of Incorporation or other relevant statutes to permit the Regional Municipality to licence cartage operations between its constituent municipalities within the commercial zone where the goods originate and terminate therein.
  4. The Ministry of Transportation and Communications continue with Phase 3 of its cartage information study.
  5. The Ministry of Transportation and Communications encourage municipalities to study urban freight movements in conjunction with or separate from other transportation studies as the needs of the municipality dictate .
  6. Such studies reflect the needs identified by the noted Phase 1, 2 and 3, Cartage Reports for the Ministry.
  7. The Ministry of Transportation and Communications set up a share-funding procedure specifically for municipal urban freight studies.
  8. The Ministry of Government Services and other appropriate Ministries should consult with the appropriate City of Toronto and Metropolitan Toronto leaders, agencies and officials, including the Metropolitan Toronto Traffic Committee, and the Ministry of Government Services should establish a pilot demonstration project to rationalize the pick up and delivery of goods to and from Ontario Government buildings within the Queen's Park complex.

## PART III - CHAPTER 6

### REFERENCES

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## **PART IV**

### **Rates**



## CHAPTER 1

### THE NATURE AND IMPORTANCE OF RATES

#### 1.1 The Nature of The Rates Structure

In Ontario, there exist four fundamental types of truck rates; these are truckload (TL) class rates, truckload commodity rates, less-than-truckload (LTL) class rates and less-than-truckload commodity rates.

The majority of truckload shipments in Ontario move under commodity rates which are established for specific commodities between specified points, or occasionally for specified mileage ranges. These are the normal rates published by the carrier and, once published, are available to all shippers.

The remainder of truckload shipments move under class rates which are usually higher than commodity rates and are based on a grouping of commodities into various classes. Commodities are grouped into classes according to their value, density and fragility. In Ontario, the trucking industry uses the National Motor Freight Classification NMF-100. Under this classification, for example, baseballs are Class 55, ivory pool balls are Class 100, inflated basketballs, footballs, etc., are Class 150 and pingpong balls are Class 500. All commodities in a given class move under the same rate. As the class system was originally developed, the Class 85 rate was 85 percent of the Class 100 rate; the Class 70 rate was 70 percent and so on. Due to rate changes

over the years, this is no longer always true. Class rates are used only when no published commodity rate is available, usually where volume is small.

LTL shipments in Ontario move under both class and commodity rates, with the latter usually in effect only between larger centres. Within the class group, most movements use a special rate applying to all types of commodities called Freight-All-Kinds (FAK) rates. As with truckload shipments, each rate applies only to a specific point or mileage range. LTL shipments which are not assessed Class or FAK rates will be assessed specific commodity rates applicable to the particular commodity shipped. Commodity rates are available for LTL shipments only when there is a regular or large volume movement of the commodity in question. These rates are therefore advantageous to firms which are located in high-volume corridors and to firms with a large volume of shipments.

## 1.2 General Observations

The Committee heard considerable testimony regarding trucking rates in Ontario. Beyond the formal testimony, it has been apprised of many articles and papers which deal with rates and the rate-making process in Ontario, in other jurisdictions in Canada and the United States, and in other countries of the World. A great deal of what has been done has been derived from theoretical models resulting in conclusions the validity of which is questionable without further testing based upon actual data.

If permitted general observations on rates and on the state of



the art in analyzing trucking rates, the Committee would suggest for example, the following:

- 1) The rate structures which exist in Ontario and other North American jurisdictions are very complex.
- 2) These structures seem to be more complex than necessary and the rate filing system in Ontario may not be capable of ameliorating the situation.
- 3) Overly complex rate structures inhibit the economic and efficient commerce within the trucking industry and more importantly, within the shipping segment of the economy.
- 4) If economic regulation of the trucking industry is to work efficiently in the public's interest, then cross-subsidization of profits will exist. One would not expect rates to be less than costs for any length of time.
- 5) The Committee cannot prove whether or not there is any pattern to cross-subsidization within the rate structure as it applies to Ontario.
- 6) Rate filing in principle is a desirable provision but changes must be made.

There are historical reasons for the complexities in the rate structure. Railways were for years the predominant force in transportation in Canada. For some time, they held a virtual monopoly over all goods movement. With the passage of time, a complex rate structure grew, reflecting a high degree of monopoly power, the strengths of certain shippers, the value and weight of traffic costs and the Government's desire to protect captive shippers from discriminatory rates. When the motor carrier industry grew to compete with rail, the motor carriers adopted the same complex rate structure that the railways employed. It was the only rate structure available and it was understood by shippers. The growing motor carrier industry hoped that the rail rates would yield sufficient profit.

The rates now charged reflect the complexities of the original system and are made more complicated as motor carriers structure rates to reflect their own costs, operations, customers and competitors.

Thus, in addition to considerations of cost, trucking rates reflect a carrier's competition and customers. The classic example of competitive influence was the reaction from Alberta when the Canadian railways reduced their rates from Ontario lake ports to Vancouver, B.C. This was caused by the threat of moving goods by vessel from Ontario through the St. Lawrence River, Atlantic Ocean, Panama Canal and the Pacific. There are no gasoline taxes on the ocean route.

It was discovered that the rate charged for the movement of canned goods and steel from Hamilton to Vancouver was less than the rate charged for the movement of the same commodities between Hamilton and Calgary. The result was that the Calgary manufacturer was unable to compete with the Vancouver manufacturer of the same goods. The railways defended their water-based rates on the ground that they had no choice if they wanted to keep the traffic. The Government of the Province of Alberta, however, pointed to the obvious disadvantage to its residents.

Other instances exist. Many rail rates from Toronto to Montreal are also water compelled. If the railways raise their prices, the steamships will attract the traffic. Thus railway rates must reflect this competition.

In turn, this practice affects the truck rates. If the road carriers charge much more than the railway, they cannot attract traffic.

For instance, the consignee in Cornwall finds that the rate for truck movements from Toronto may be higher than the rate for similar

movements from Toronto to Montreal. Similarly, the rate from Toronto to Perth may be higher than the rate from Toronto to Montreal. These are simply illustrations of the complicated factors that go into rate-making. One could complicate the picture by introducing the cost of transportation from Montreal to Toronto on a ship which has travelled from European ports. It would be found that the revenue derived by the water carrier for the mileage between Montreal and Toronto is close to zero.

Rates are affected by the presence or absence of reciprocal arrangements between shipper and carrier. If the shipper is a vendor of automotive supplies and the carrier purchases such supplies from the vendor, the carrier can expect to carry the traffic of the vendor. Here again, cost factors of the carrier are relatively unimportant.

Whatever the bases for rates, the level of rates is an important consideration if:

- 1) performance of the industry is to be assessed
- 2) a regulatory system is to be assessed
- 3) changes to the social, economic and industrial development patterns within the Province are to be made and evaluated and if active policies are to be used to promote growth and/or diversification.

### 1.3 Modal Choice

A transportation rate is not the only factor influencing modal choice or growth and development patterns, but rates or the costs of transportation to the shipper do play a role which must be recognized.

It would be expected for instance "that if all other things were equal, the demand for any kind of transport would vary inversely with its freight rate."<sup>1</sup>

However, other factors may override a difference in rates. For example, "the service provided by the various modes is not similar. When both inventory and shipping costs are taken into consideration, the mode with high rates may turn out to be a relatively inexpensive one."<sup>2</sup>

The Ministry of Transportation and Communications in its Survey of Shippers examined several other factors which it felt would influence modal choice. Those were:

- firm size
- firm location
- type of commodity
- distance to be hauled
- market distribution
- stability of demand
- rates
- service
- availability of rail
- availability of private truck, and
- city size.

That survey found that in deciding between private versus common carrier, "market distribution appears to be the most important determinant."<sup>3</sup>

In the rail versus for-hire truck equation, "firm size is by far the most important factor."<sup>4</sup> With regard to private truck versus rail, "distance appears to be the most important factor."<sup>5</sup>

These comments are presented only to point out the complexity of the modal choice decision. Rate or user cost, while being an important consideration, is not by any means the only one or even the most important one.

Even if rates of for-hire trucking services were substantially



lower, it is difficult to perceive massive shifts to truck common carrier from private truck and rail.

General economic conditions play a large role in modal choice and in the level of rates for all transportation modes. While rates do not always reflect a constant relationship with costs, they are a function of supply and demand. Demand for truck transportation is determined by and large by economic conditions. It depends on employment, and the degree, type and location of growth in the goods producing industries of the economy.

In some countries of Europe, Germany for example, the use of private trucks has grown in comparison to for-hire trucks. The German government reasons, and the Committee tends to agree, that this condition arises from factors outside the transportation industry structure. As economic conditions slide, manufacturers cannot afford to build up inventories and excess capacity. Distribution and timing become critical and excess capacity is invested in private transportation.

Certainly modal choice and rate levels of one mode compared to another reflect the degree of competition, but rates are a function of demand for transport service which depends on the state and health of the economy.

#### 1.4 Plant Location

Rates are a factor when an entrepreneur is deciding where to locate an industry. Rates or aggregated transportation costs to the user are an important consideration in this regard. Just how important they are is a moot point, but clearly transportation costs must be

examined in this context, whether they play a critical role in regional development and industrial growth or whether they are significant only at the margin.

## PART IV - CHAPTER 1

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## CHAPTER 2

### RATE FILING

#### 2.1 Background

Currently, there is no regulatory control of trucking rate levels in Ontario. Whether or not regulatory "influence" exists is another question. For-hire carriers who hold licences under The Public Commercial Vehicles Act are generally required to file with the Ontario Highway Transport Board a tariff of their tolls. New tolls (rates) cannot be put into effect by the filing carrier for 30 days from the date of filing. The rates which are filed are those which the filing carrier must charge - he may charge a rate neither higher nor lower. If the rates are to change, the carrier must file his new rate and accept the automatic 30 day delay.

Holders of Class R licences for the movement of road construction materials are not required to file; likewise, carriers holding licences of any class who operate four or less powered vehicles are exempt from the rate filing requirement.

The Public Commercial Vehicles Act states:

- 12j - (1) Except as provided by the regulations, each holder of an operating licence or of a freight forwarder's licence shall, on payment of the prescribed fee, file with the Board a tariff of tolls showing all the rates or charges for the transportation of goods to and from points in respect of which the transportation is provided or offered by the licensee or by arrangement with any other licensee or any other carrier.
- (2) No holder of an operating licence or freight forwarder's licence shall charge a toll that is not contained in, and in accordance with, the tariff filed by him under sub-section 1.



The Regulations under the Act state:

29. Section 33 does not apply to,

- (a) a licensee who is the registered owner of a total of four or less vehicles licensed under the Act, other than a licensee who is the holder of a Class H operating licence;
- (b) the holder of a Class E or Class FS operating licence; or
- (c) a licensee, other than a licensee who is the holder of a Class T operating licence, in respect of the transportation of,
  - (i) livestock, coal, rough lumber, bricks, tile, cement blocks, cement, cinder blocks, garbage, sand, gravel, rubble, slag, earth, turf or crushed or uncut rock and stone, or
  - (ii) materials to stock piles and construction sites for use in construction and maintenance of a highway. O. Reg. 416/74, 3.2.

33. The following fees are payable by a licensee upon the filing of a tariff of tolls:

Class "A" operating licence	\$ 50.00
Class "C" operating licence	50.00
Class "D" operating licence	25.00
Class "FF" operating licence	50.00
Class "H" operating licence	25.00
Class "K" operating licence	25.00
Class "T" operating licence	50.00
Filing of an amendment	5.00

The Duff Report of 1933 contained a recommendation that schedules of rates and charges of common carriers be published. The Public Commercial Vehicles Act was amended in 1934 to provide inter alia, for the making of regulations "respecting the publication, filing and posting of tariffs, of tolls and the payment of such tolls." However, it was not until 1963 that the principle of the enabling legislation of 1934 was enacted. In that year, regulations were prescribed to make mandatory the filing of tariffs of tolls.

A report to the Deputy Minister of Transport in 1961 stated in part that:

requests that the filing of rates be made compulsory in this Province have come mainly from the Automotive Transport Association...no serious objections have been raised by either shippers or like-minded carriers against simple rate filing. Opposition has been concentrated almost entirely on proposals for some form of government approval or regulation. The carriers felt that rate filing would eliminate destructive competition, facilitate the publication of through rates and strengthen the position of Ontario carriers and shippers vis à vis transport authorities in other jurisdictions. Quebec and the Interstate Commerce Commission already controlled rates; there were 28 states where some form of rate control was in effect in 1959.<sup>1</sup>

Rate filing as it is now practised in Ontario was established in 1963.

## 2.2 Current Questions

The Ontario Highway Transport Board, apart from its statutory authority, demands the filing of tariffs in certain cases in which it feels such filing is in the public interest. The holder of a Class X operating authority now files a tariff of tolls, regardless of the number of vehicles registered. The Board's fee for this filing is \$50.00. As well, the Board interprets "other than a licensee who is the holder of a Class H operating licence" (section 29 above) as including a carrier to whose licence is attached an "H" operating privilege.

The Committee agrees that filing in these cases should be required.

It should be noted that the situation is considerably different for the movement of people. The Public Vehicles Act of Ontario provides that:

10. (1) Subject to Section 11, no tolls shall be charged by the licensee for services rendered pursuant to his operating licence until a tariff thereof has been filed with and approved by the Minister as being fair and reasonable or otherwise than in accordance with such tariff.
- (2) Subject to Section 11, where a tariff of tolls has been approved by the Minister under subsection 1, the Minister may at any time revise such tariff and make such changes therein as are fair and reasonable and thereafter no tolls shall be charged except in accordance with the revised tariff.
11. (1) Before refusing to approve a tariff of tolls filed with him or before revising a tariff of tolls without the consent of the licensee who filed the tariff the Minister shall refer the matter to the Board for a hearing and report.
- (2) Pursuant to a reference under this Section, the Board shall hold a hearing to inquire whether the tariff of tolls should be approved as filed or approved with amendments or revised.
- (3) The Minister, the licensee and such other persons as the Board may specify are parties to a hearing under this Section.
- (4) The Board shall at the conclusion of a hearing under this Section make a report to the Minister, which shall set out a summary of the representations of the parties, its findings of fact and any other information that it considers relevant to determining fair and reasonable rates.

11. (5) After considering the report of the Board under this section, the Minister may approve the tariff of tolls filed with him either as the tariff was filed or as amended or may revise the tariff of tolls to which the report relates and shall give written notice of his decision to the licensee stating the reasons therefor.

The obvious and significant difference between Public Commercial Vehicles Act and Public Vehicles Act provisions is that rates filed by Public Vehicle operators are subject to the approval of the Minister of Transportation & Communications. Not only has the Minister the authority to approve or disapprove of rates, he has the power to revise a tariffs of tolls without the consent of the licensee. Rates are controllable by government in the case of the movement of people but are not in the case of the movement of goods, even where the goods are transported in the same vehicle as the passengers.

Chapter 5 of this Part deals more extensively with this question.

Regardless of the Committee's views on the question of rate control, the process which involves tariffs of virtually all tolls to be filed is a necessary ingredient of the regulation of the trucking industry.

A knowledge of the rates being charged on a regular basis is a vital ingredient to efficient management and analysis of the industry by carriers and shippers alike.

It is critical if government is to evaluate its policies towards the movement of goods. Regulatory programs and other policies will have an effect on rate levels and rate structures. Government must be able to plan its policies to have where desirable a predetermined effect on rates. To do so, it must know what the rates are.



Rate filing affects the nature of competition within the trucking industry and the ability of one carrier to compete with another. That rate changes cannot be made effective in less than 30 days has two results. One, the firm has less flexibility; two, stability is encouraged in the pricing process. Relative stability is a desirable objective.

The exemption of those with four or less vehicles from the requirement to file rates, poses some interesting questions. One brief stated:

(This) present exemption places the licensee with four or less trucks at a distinct competitive advantage over a large segment of the industry which operate fleets not very much in excess of four trucks. 2

Neither of the two major shipping groups making representations to the Committee commented specifically on this point although they did reflect on the rate filing concept. 3

The Committee suspects that the exemption exists to ease the burden of government regulations on the small carrier. In 1960, more than one-third of Class A operators had not more than four vehicles each.4 Of the 4,023 firms which reported to Statistics Canada (1974 report on 1973 data), the average fleet size is 4.4. vehicles (power units) per operator, Class I carriers excluded.

It would be fair to assume that there are a relatively large number of licensees who do not now file tariffs. The Ontario Highway Transport Board at the time of writing reported filings from approximately 2,500 active licensees, which represent less than 50% of all licensees in Ontario.

At the outset, the exemption applied only to those who operated four or less total vehicles, i.e. power units and trailers. Since 1970, trailers have not required plates under The Public Commercial Vehicles Act.

The rate filing exemption was not amended and the effect was to extend the exemption to a greater number of carriers, those with four or less power units, regardless of the number of trailers operated.

Taking the sum of all those licensees who do not now file, there are many trucking firms which through the exemption have a competitive advantage over a large segment of the industry not so very different in terms of size, capital plant and capability. As well, the filing exemption leaves considerable capacity outside the filing system which in principle the Committee supports, and the government thereby does not have the benefit of access to and information about this rather large segment of the industry.

On balance, there is benefit in the continuation of the exemption. Small business must be encouraged and assisted where possible. Small trucking companies are often found serving smaller communities. The service is local, personalized and beneficial.

Despite heated arguments over the question of whether or not scale economies exist in the trucking industry, a large carrier, given any excess capacity in the short run, and its greater ability to finance short run losses, has certain competitive strengths over a small carrier. This may result simply from having the ability or expertise to generate more business. This is borne out by the fact that Class 1 carriers reporting to Statistics Canada in 1974 made \$56,953 per piece of revenue equipment. Carriers in other classes made \$30,075 per unit of revenue equipment (this does not take differing costs into consideration which might show net revenues per unit to be more equal).

On the other hand, the small carrier can and does in many cases have advantages over the large carriers. These result from personalized service to local customers and from lower total average costs across the operation. The small carrier, where he is and can be more efficient

than a large carrier, should be encouraged.

His ability to decrease rates faster than a large carrier is one source of advantage. Over all, it is likely that the ability of a small carrier to decrease rates quickly provides a salutary competitive effect on rate levels.

As a result, the Committee supports a continuation of the exemption principle. The Committee has recommended a title law system for Ontario, but would not alter the exemption from filing accordingly. If the exemption applied to firms which hold title to four or less vehicles the exemption would apply to more firms than it does today. The principle should apply to vehicles operated, not only those owned or registered. A firm which owns 3 vehicles but operates 20 through owner driver contracts should not be exempt.

### 2.3 Recommendations

The Committee recommends that:

- 1) The rate filing process be continued.
- 2) Section 29(a) of the Regulations be amended to the effect of the following:
  - (i) Section 33 does not apply to a licensee who operates a total of four or less power units, other than a licensee who is the holder of a Class H licence and/or a Class X licence and/or a Class H privilege.
  - (ii) A licensee who is the titled or registered owner of four or less power units shall not be exempt if at any time his fleet is augmented by the lease of one or more power units.
- 2a) A \$50.00 fee for Class X carrier filing a tariff of tolls be prescribed.
- 3) Other existing exemptions to rate filing be continued.
- 4) The 30 day limit on rate changes be continued.
- 5i) The Ontario Highway Transport Board be given legal authority to waive the 30 day requirement in cases of rate decreases in conditions of emergency for the public, the shipper and/or

the carrier, and that such a waiver be for a maximum period of 45 days and that it not remove the responsibility from the carrier to file that lower rate.

- (ii) The Board make any such waiver public by posting appropriate notice at its offices or by other effective means.



## PART IV - CHAPTER 2

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## CHAPTER 3

### THE RATE SETTING PROCESS

#### 3.1 Rate Policy

The rate-making process is as complicated as the myriad of tariffs which result from it. There are arguments in Ontario and other jurisdictions participated in by economists, trucking experts and politicians as to whether or not trucking rates are cost-based and whether or not they should be. Whether rates are "cost-based" (bear a constant relationship to cost) or "cost-related" (bear a variable relationship to cost), whether they are formed on a value of service concept, whether or not cross-subsidization exists, whether or not it should exist, and if so, who should be subsidizing whom; these are all questions with which the Committee has been faced. These are not new questions.

Just part of the difficulty in trying to comprehend the current situation arises from the necessity to determine what a motor carrier's costs actually are. This process is important because much of the academic work which supports the concept of deregulating entry into the industry is based on certain conditions assumed to apply to the trucking industry. These conditions relate to the rationale of price setting, the carrier's lack of ability to cut rates in the short run below variable costs and the absence of any scale economies. To evaluate these arguments or indeed to make them in the first place, one must acquire a knowledge of the cost structure of motor carrier firms.

Rates are central to the controversy surrounding the trucking industry throughout the world. It is true that, if regulatory laws are not enforceable, one might just as well do away with the regulatory law. It is perhaps even truer that if regulatory law produces rates, - i.e. the cost to the consumer of transportation - which are not in the public interest, then the law is not functioning properly. This statement raises a number of questions, the most important being whether or not the Government has a policy with regard to rates, and if it does, is it one which on balance is in the public interest?

The Committee is not aware of any policy in this area. It does not know whether the Government supports value of service pricing or not. It does not know what the Government's position is in relation to cross-subsidization.

While this issue is not new to academics or to the trucking industry, it is new in the context of public policy in Ontario. The level and rationale of the rates produced by a regulatory system are central to all the questions which surround the trucking industry.

### 3.2 Carrier Costs and Rates

Transportation cost-finding is generally based on the concept that there are two types of costs: out-of-pocket or variable costs and fixed costs. The term variable cost is often used and in many cases interpreted differently.<sup>1</sup> It generally is thought to include only the actual directly related expenses of providing a particular service. Fixed costs include all other costs. Variable costs are those which the carrier would save if he were not performing a particular service. Fixed costs

relate to the costs that theoretically would have to be paid even if the carrier were performing no service at all. It is standard to assume that a price which covers the carrier's variable costs is compensatory. To the extent that it exceeds this level, it is viewed as making a positive contribution to overhead and profits.<sup>2</sup>

There has been a great deal of public discussion in the transportation industry about the possibility of developing formula cost-based rates. Theoretically, this would result in a simplified rate structure by making the bill of lading a "cost plus" contract.

But there are problems:

To begin with, there is the problem of cost finding itself... This is not an insoluble one; but to date it has not been solved...further, the cost plus contract minimizes contractor incentive to keep tight controls on cost. Cost based rates that would insure carriers of some profits on all segments of traffic and which would set upper limits on profits regardless of productivity gains can hardly be expected to improve the situation (in the United States)...finally, cost based rate theories ignore the upper limit of rate making...the limit imposed by the concept of the value of service.<sup>3</sup>

As a general comment, it appears that rates in Ontario are not purely cost-based:

the contribution of average length of haul, average net weight per load, and average annual wage per employee together account for approximately 55% of the variation in rates per ton mile. This would suggest that although costs influence rates, the rates are not cost-based...<sup>4</sup>

However, a clear distinction must be made between cost-based as a theoretical model and cost-related. It appears that there are many factors which necessarily go into the formulation of effective transportation rates. Rates depend not only on what the service costs do provide, but also on what shippers are willing to pay for it.



Costs on the other hand are set by the interaction of many complex variables. To determine a cost-rate relationship in either theory or practice, one must determine the nature of and quantify the effect of these factors on variable, fixed and total costs. It must be determined how they do interact and how they should interact.

### 3.2.1 Mileage

One study agreed that rates should reflect direct route mileage.<sup>5</sup> This is based on the generally held precept that total cost per ton mile of a specific movement will decrease as mileage increases. Therefore, there is a "tapering" effect on costs for a given movement which should be consistently reflected in the rate structure.

The authors of that study felt that, if rates across the board tend to increase by a fixed percentage, the effect of the taper tends to diminish. Where it does diminish, this places communities far removed from major markets at a disadvantage through facing rates higher than costs might warrant, assuming cost was the only determinant of the rates.

One source states:

Any empirical work on trucking rates show that mileage (which of course affects costs) influences rates. This is not to say that rates vary (or should) directly with mileage. There are many mitigating factors:

- (i) certain non mileage related costs (for example pick up and delivery costs) decrease in importance on a per mile basis the longer the haul;
- (ii) certain traffic lanes or certain commodities have better load factors and therefore rates on two equidistant hauls in different areas may differ;

- (iii) certain lanes may have better backhauls and this may be reflected in rates;
- (iv) competitive factors may lessen strict adherence of rates to mileage in certain areas of the Province. <sup>6</sup>

### 3.2.2 Other Factors Contributing to Costs

Quite apart from the regulation-cost-rate arguments, it is clear that "natural" conditions profoundly affect rates. For example, consider backhaul availability. Because costs are incurred whether or not a load is hauled, relative equality of traffic generation capacity is a factor in the determination of rates. The costs of empty or light return miles will tend to be viewed in determining the major flow direction rate. "In theory, it is probable that carriers will be motivated to secure revenue traffic for the minor flow direction by offering rates lower than those prevailing on similar movements in the major flow direction." <sup>7</sup> This effect can have a significant impact on rate levels.

Dr. Norman Bonsor, in his recent report to the Ontario Economic Council stated:

We hypothesize that freight rates given demand are determined by three sets of factors; by the cost of structures of the carriers, by the degree and type of intermodal competition and by the degree and type of government regulation of the transport sector. <sup>8</sup>

He went on to say, "in the real world costs depend on volume, weight and type of commodity as well as distance". Further "while the degree and type of intermodal competition helps determine the structure of freight rates, the presence of alternative modes does not by itself lead to competitive rate levels." <sup>9</sup> The third factor, government regulations, was dealt with largely in the sense that it affects the levels of intramodal competition.

On costs, the report stated:

If sufficient data were available for transport modes, it might be feasible to generate statistically meaningful cost functions. Rates would then be compared with cost and an index of cross-subsidization by route and commodity type could be constructed. Only in the case of air transportation is the level of disaggregation of costs fine enough to permit this approach.<sup>10</sup>

A very large share of the cost of road transport is in labour. As labour becomes more expensive, there is an immediate reflection in the cost of carriage and ultimately in the rates charged. If the cost of labour is greater in some areas, in larger companies or in specialized situations, the results are obvious. Disparities will abound. The carrier which has signed a union contract will find itself on a different cost basis than one which has signed a contract with another union or is not unionized.

Some unions seek and obtain fringe benefits and insist on work procedures which are not common to other unions. For instance, a union may prohibit a driver from unloading. Another union may permit unloading but no movement beyond the sidewalk at the side of the road. A union may require an international shipment from Detroit to be taken to Toronto before it can be returned to Oakville. These hypothetical cases indicate the possible variety of labour constraints which will reflect themselves in costs of highway carriers of goods.

Competition in such cases will come from privately owned vehicles, leased vehicles, owner-operators, non-union companies or unionized carriers. Even in assessments by the Workmen's Compensation Board, the Committee finds a cost factor which will reflect itself adversely in the rates to be charged by a carrier as against a shipper operating his own fleet.

The Committee does not recommend changes in this area. It is important to recognize, however, that labour affects the level of costs and therefore the level of rates. Differentials between firms based on labour considerations will affect the competitive ability of one carrier in comparison to the other.

Motor carrier costs arise not only from the nature of specific movements. Costs, as indicated, arise from many factors, some of which were discussed above. Table 1 on the following pages represents both operating revenues and expenses for 811 Ontario Trucking Associations' members who are regulated. It is not the numbers that the Committee seeks to emphasize, rather the varied factors which contribute to a carrier's cost.

As an indication, taking the reported costs in the table as representing total costs, the following factors contributed the following percentages to total costs:

1. Transportation expenses	62.8 %
2. Maintenance and garage expenses	9.8
3. Terminal expenses	10.4
4. Traffic and sales expenses	1.6
5. Insurance and claims expenses	2.9
6. Administration and general office expenses.	12.5

A report in 1972 by Trimac Consultants for Transport Canada on the Operating Costs of Trucks in Canada is amongst the most definitive works in Canada to date. That report identified several parameters in the cost equation, as follows.



## ONTARIO TRUCKING ASSOCIATION MEMBER CARRIERS

## 1974 Revenues and Expenses

## (Thousands of Dollars)

	Class 1 (1)	Class 2	Class 3	Class 4,5,0	TOTAL
Establishments reporting	69	95	236	411	811
Operating revenues:					
Inter-city freight revenues	797,676	127,749			925,425
Local freight revenues	25,467	20,532			45,999
Storage and warehousing revenues	1,020	552			1,572
Equipment rentals	1,152	819			1,971
Other revenues (including subsidies)	10,005	1,632			11,637
Operating revenues - Total	835,320	151,284	82,251	92,135	1,160,990
Operating expenses: (Class 1,2,3 only)					
Transportation expenses:					
Salaries and wages of drivers and helpers	171,806	39,616	22,068		233,490
Salaries and wages of other transportation employees	7,380	1,846			9,226
Fuel (including fuel tax)	57,819	13,908	9,340		81,067
Tires and tubes	12,016	2,560	1,969		16,545
Other operating supplies (such as oil, anti-freeze)	4,981	445	1,565		6,991
Vehicle rent with driver (broker operators)	83,978	16,021	6,282		106,281
Vehicle rent without driver	18,124	2,087	2,070		22,281
Purchased transportation (from motor carriers)	25,592	3,534	2,020		31,146
Purchased transportation (from railroads)	33,230	115	209		33,554
Purchased transportation (from water carriers)	393				393
Purchased transportation (from airlines)	346				346
Other purchased transportation (such as driver overload)	592	403			995
Vehicle licence and registration fees	15,915	3,945	2,626		22,486
Depreciation of revenue equipment	36,707	10,795	6,493		53,995
Other transportation expenses	15,279	3,132			18,411
Total Transportation Expenses	484,158	98,407	54,642		637,207

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	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4,5,0</u>	<u>TOTAL</u>
Maintenance and garage expenses:					
Salaries and wages	34,274	4,101	1,841		40,216
Vehicle parts	23,460	4,915			28,375
Purchased repair	11,653	4,125			15,778
Other operating supplies	1,486	601			2,087
Repairs and maintenance to garage	735				735
Garage rental	1,634				1,634
Depreciation (buildings and equipment)	1,046				1,046
Other maintenance expenses	4,041	608	5,411		10,060
Total	78,329	14,350	7,252		99,931
Terminal expenses:					
Salaries and wages	67,008	1,988	901		69,897
Operating supplies and expenses	6,719	385			7,104
Repairs and maintenance (terminal and grounds)	3,689				3,689
Platform and terminal rental	5,952				5,952
Joint facility expenses (net)	1,601				1,601
Depreciation (buildings and equipment)	2,963				2,963
Other terminal expenses	12,194	1,109	805		14,108
Total	100,126	3,482	1,706		105,314
Traffic and sales expenses:					
Salaries and wages	8,960	757			9,717
Advertising	2,151				2,151
Other traffic and sales expenses	3,174	802			3,976
Total	14,285	1,559			15,844
Insurance and claims expenses:					
Salaries and wages	1,563	250			1,813
Vehicle insurance (public liability and collision)	8,158				8,158
Cargo loss and damage	8,624				8,624
Other insurance payments	2,383				2,383
Other insurance and claims expenses	2,738	3,463	2,302		8,503
Total	23,466	3,713	2,302		29,481

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	Class 1	Class 2	Class 3	Class 4,5,0	TOTAL
Administration and general office expenses:					
Salaries and wages	28,176	8,146	5,764		42,086
Unemployment insurance, pension funds and other employee benefits	35,563	3,176	1,717		40,456
General supplies and expenses	11,982	2,505			14,487
Repairs and maintenance (buildings and grounds)	480				480
Head office rental	2,788				2,788
Depreciation (buildings and equipment)	1,170	838	1,391		3,399
Real estate and property taxes	2,423	396			2,819
Other administrative and general expenses	11,207	3,351	6,072		20,630
Total	93,789	18,412	14,944		127,145
Total Non-Transportation Expenses	309,995	41,516	26,204		377,715
Grand Total - Operating Expenses	794,153	139,923	80,846		1,014,922
Income account: (Class 1,2,3 only)					
Net motor carrier operating revenues	41,167	11,361	1,405		53,933
As a percent of gross operating revenues	4.9	7.5	1.7		5.1

Notes:

1.	Class	Gross Annual Revenues
1		\$2,000,000 or more
2		\$ 500,000 to 1,999,999
3		\$ 100,000 to 499,999
4		\$ 25,000 to 99,999
5		\$ 0 to 24,999
0		Not classified in 1974 Survey

- Ontario Trucking Association Class 1 member carriers include 54 domiciled in Ontario and 15 domiciled elsewhere.

Assumptions are also noted where of interest.

1. Tractor and Trailer Purchase Costs

Must consider provincial sales tax and cost of extra equipment required in some areas.

2. Depreciation

"Normal" depreciation used. That is, 1% a month for trailers for a trailer life of 8 years and 79.2% for tractors over a tractor life of 5 years. Depreciation was escalated at a ratio corresponding to miles travelled over 120,000 miles a year.

3. Worktime Rate, Overtime Rate and Subsistence Rate

Obtained from the various collective bargaining agreements for the different areas under study, as were the worktime limits for overtime and subsistence.

4. Mileage Rate

The mileage rates for each area along with the mileage limit for determining when a driver does revert to a mileage rate were obtained from the above-mentioned union agreements. Since the non-urban cases were all based on a round-trip mileage of 200 miles, the wages will be calculated strictly on a mileage basis, plus load-unload time. A mileage pay basis is the most desirable method to use in order to compare fluctuations in salary for various annual mileages, since annual mileage is the only fixed criteria in this study on which to base wages.

5. Average Miles per Gallon

A study was made of the 3 different classifications of units in the various areas to obtain an accurate miles per gallon figure for each. For the urban conditions, the major city in each area was used for the study, causing a consideration of the stopping and starting required, affecting the average miles per gallon performance.

6. Repair Costs per Mile

Again, a study of operations in each area was carried out to determine what the repair costs would be. The repair costs shown are higher than what a first-year operation would actually be. The repair costs we have shown are the costs of the units in their third year of operation for tractors and fifth year of operation for trailers since it has been found that the average age of most fleets is three years for tractors and five years for trailers.



7. Tractor and Trailer Transport Expense

The cost of transport equipment for the different types of tractors and trailers have been obtained by again studying actual operations in the various areas, and taking into account the replacement and repair requirements depending on the mileage travelled. Chains and safety equipment are more costly in areas such as B. C. and the Territories and must be replaced earlier than those in other areas.

Because of replacement criteria, the net effect of the cost per mile between 100,000 miles and 175,000 miles, for instance, is almost nil...

Equipment such as pumps and hoses were included in the original cost of the equipment. Maintenance and replacement of same are shown as part of the transport cost.

8. Tractor and Trailer Cleaning Costs

The cost of cleaning a tractor has been found to have no effect in the cost of the total operation, and the same is true for the cleaning costs of vans.

Since the tanks have been determined as non-stainless steel, it is not necessary to clean the tank after every trip. A study of "bulker" fleets with non-stainless steel tanks, carrying liquids and powders, provided the average trailer cleaning costs for tanks for the various areas of operation.

9. Administration and Insurance Costs

Administration costs have been set at 12% of revenue and insurance costs have been set at 3% of revenue. This seems to be the norm in most operations.

10. Profit

We have designated a parameter of 10% of total revenue for profit. This seems to be the satisfactory norm for most successful operations.

11. Wage Burden Costs

Wage burden costs have been set at the actual percent of total wage costs for operations in each area. This burden rate has been found to fluctuate from 23% of wage costs in Ontario to a low of 18% in the Prairie Provinces.

12. Carrying Capacities

Statistics not quoted.

13. Mealtime

Mealtime has been designated at 18% of total worktime.

14. Cost of Diesel Fuel

It is a fact that the cost of diesel fuel fluctuates not only in each Province, but also within an area of a Province, depending on which distributor it is bought from.

We have surveyed the various costs in the most heavily populated areas of each Province, and obtained the most commonly paid price wherever possible. Where this was not possible, the "mean" price was used. These costs include provincial tax, of course.

15. Tire Costs

To obtain a realistic tire cost for the various types of units in the different areas of operation, the following items were considered:

- 1) Cost of new tires in each area for the particular vehicle.
- 2) Life of tire in each area.
- 3) Cost of retreading, when retreading is desirable, and life of a retread tire for each area.
- 4) The actual tire cost for large trucking companies in each area.

The correlation of the above information has provided a realistic cost basis for tires, which compare favourably to the tire costs of actual operations.

The cost sheets provided in this exercise are based on a study of paved highway conditions in all areas but the Territories. A further comparison to gravel conditions has provided the following facts.

The only significant cost differences between a predominantly gravel highway operation and a paved highway operation are involved in tire and repair costs.<sup>11</sup>

### 3.3 The Level of Rates

#### 3.3.1 The Nature of our Inquiry

The Committee devoted most of its efforts to reporting on the rate setting process rather than trying to analyze in detail the result produced by that process. Here the Committee comments only on those studies which have been made available to it.

The Sloss, McLachlan, Palmer series of articles commenced a debate over rates and their level in Canada. More recently Dr. Maister has approached the same subject. This Report has referred to the Ministry of Transportation and Communications' Study "Truck Transportation in Ontario, Phase 3, An Analysis of the Basic Rate Structure", and to the Ministry's study "An Investigation of Freight Rates and Related Problems". As well, the study produced by Professor Bonsor, "Transportation Rates and Economic Development in Northern Ontario" is directly relevant. The Committee also heard testimony from three tariff bureaux whose activities affect truck transportation in Ontario.

The following are quotations from several reports submitted to the Committee with reactions from the industry where available.

#### 3.3.2 Ministry of Transportation and Communications Truck Transportation in Ontario, Phase 3

##### 3.3.2.1 The Authors

The Ministry of Transportation and Communications has stated:

Less-than-truckload Freight All Kinds rates and general merchandise commodity rates in Ontario are much higher than equivalent rates in use in other provinces for the same commodities.

For truckload size shipments, Class rates in Ontario are a

little higher; commodity rates a little lower than or about the same as rates in Western Canada. Since the majority of truckload shipments in Ontario move under Commodity Rates, this means that generally, Ontario's truckload rates are among the lowest in Central and Western Canada.

Provinces in which rate regulation exists, i.e. Quebec, Manitoba and Saskatchewan do not show similar LTL rate levels.

Complete lack of regulation as is evident in Alberta does not appear to guarantee the lowest level of rates. (Actual TL rates applicable within that Province vary greatly with many being unknown because they are privately negotiated.)

Lowest level of LTL rates occur in Manitoba and Saskatchewan.

Differences in operating costs are a possible explanation for the apparent relatively high LTL rates in Ontario. Unfortunately, separate costs for LTL and TL operations are not available. However, an indication of general operating costs is available from a report prepared by Trimac Consultants for the Federal Ministry of Transport called "Truck Operating Costs in Canada". Comparing values contained in that report which show the different rates as a percentage of the Ontario rate, it is easy to see that while the difference in truckload rates is less than the relative difference in costs, LTL rates in Ontario are much higher than can be explained by an increase proportionate to general costs. While operating costs in the west are between 75 to 85 percent of Ontario costs, LTL rates in the west for 200 miles range between 25 and 50 percent of Ontario rates for the rate types studied. At the same time, Western TL rates range between 68 and 129 percent of the Ontario rates, i.e. roughly in proportion to costs, although with a wide range.

If it is assumed that the difference in LTL costs between Provinces is approximately proportional to the difference in general costs as estimated by Trimac, then the above results imply that LTL shipments make a greater contribution to profits relative to TL in Ontario than elsewhere. In turn, this may be considered to imply a degree of cross-subsidization of TL rates by LTL shippers in Ontario. An alternative hypothesis is, of course, that LTL is subsidized by TL shippers everywhere except in Ontario.

These conclusions must be qualified by stating that actual LTL costs are unknown as is the amount of freight moving under each type of rate.

With the greater density of industry in Ontario, logic would seem to imply that LTL rates should be lower than in the less



industrialized prairies. This is because the cost per unit of traffic declines as volume of traffic increases.

Offsetting this apparent advantage are higher costs in Ontario due to congestion and the need for large terminals for the handling of the supposedly larger volumes of LTL traffic. However, these reasons do not explain the lower LTL levels in the Province of Quebec.<sup>12</sup>

### 3.3.2.2 The Respondents

The results of this study are not totally supported by the tariff bureaux. Asked to comment on the summary conclusions of the Phase 3 Study, the Canadian Transport Tariff Bureau Association stated in part:

The results of the study may be invalid because of the methodology which has been employed.

The Ministry of Transportation and Communications report relied upon a very limited sample of published rate observations. The study's sweeping conclusion that LTL "general merchandise commodity rates in Ontario are much higher than equivalent rates in use in other provinces", is based on a total of 9 observations at 500 lbs. and a further 9 at 5,000 lbs. Of these total of 18 rates, 12 were taken from one trucking company. CTTBA conservatively estimates that it alone files over 8,000 LTL commodity rates for intra-Ontario. The selection of the specific rates studied would directly affect the comparison and the conclusions that would be reached.

A second weakness of the Ministry of Transportation and Communications study is the apparent use of nothing but the standard tariffs in Manitoba and Saskatchewan. While it is probably true that these Provinces have low LTL rates, a simple comparison such as shown in the Ministry of Transportation and Communications study can understate true rate levels. In both Provinces, a certain percentage of traffic moves at rates higher than those shown on the standard tariff. This is caused by either exception lists or surcharges into certain areas.

We believe that these methodological flaws are potentially quite serious. There have been, for example, somewhat similar techniques employed in the published literature and they have been subject to a very negative comment from both scholars and men with long operating experience. Some of

the criticism that has been cited for the type of approach used by the Ministry of Transportation and Communications could be reiterated here but we are sure that the authors are familiar with the background literature. We believe that attention should be drawn to item (4) on page 28 of the report. Implicit recognition is given here to the fact that one possible interpretation of the study is that LTL rates may be unduly low in other Provinces.

This, however, is a possibility of which the authors are aware, just as they are probably aware of many other possible shortcomings of their approach. Good research in the industry is critically retarded by the lack of good data.

We believe that the proper light in which to regard the Ministry of Transportation and Communications' report is as a commendable first pass at the problem. It clearly illustrates the need for much more extensive research. We do not believe, however, that one can assert with confidence that LTL rates are higher in Ontario than elsewhere. This strains the methodology of the study beyond acceptable limits.<sup>13</sup>

The Niagara Frontier Tariff Bureau commented on the Phase 3 in part as follows:

The determination of a just and reasonable rate level is at best an extremely difficult problem. It is generally attacked by the development of cost-revenue relationships. Under this procedure, the revenues of given segments of traffic are compared with the costs of handling such traffic. To do this requires: a uniform accounting system that is fairly detailed and which breaks costs down into terminal, line-haul, pick up and delivery, platform, and billing and collection; performance studies that permit the determination of average load factors, frequency of platforming, etc.; and a traffic study that shows a consist of the traffic that is actually moving. Another method of developing costs is a time and motion study whose weakness is its failure to account for all of the dollars actually spent (i.e. those resulting from equipment breakdowns, snow storms, etc.).

Lacking the facts that would permit such a costing to be done, the Ministry has resorted to a comparative type analysis. Such an analysis provides a good insight into rate levels but requires a knowledge of the conditions which exist in all territories being compared. Without such knowledge, one may find they are actually comparing apples with oranges even though both are called rates.

The minimum information in the various areas that must be known includes: (1) the flow of traffic (is it balanced or heavy, eastbound or westbound, northbound or southbound); (2) the consistency of the traffic (is it largely truckload, largely LTL, is the average LTL shipment 500 lbs. or 5,000 lbs.)

(3) the type of rate under which the traffic is moving (is it class rated commodity rated, exception rated, etc.) (4) the territory involved (is it rural or highly congested); and (5) the working and wage conditions (are the carriers unionized). In addition, the study must cover a broad enough cross section of the traffic that any bias which could result from the selection of rates to be reviewed will be held to a minimum. This study looked at so few rates that any conclusion could well have resulted.

I can state without reservation that the rate level within the Province of Ontario under which the traffic actually moves is not only lower than surrounding areas but that except for cross-subsidization of other traffic would produce a bankrupt industry. In making this statement, I am not implying that all rates are unprofitable and that no shipper is paying his full share but rather that the lack of government intervention and the economic strength of some of the vested interests have produced a rate structure fraught with preference, prejudice and discrimination.<sup>14</sup>

### 3.3.3 Ministry of Transportation and Communications' Study An Investigation into Freight Rates and Related Problems in Northeastern Ontario.

#### 3.3.3.1 The Authors

The Ministry states in this study:

- (a) It has been determined that truckload class rates in the Highway 17 corridor are lower than in the Highway 11 corridor for like distances. A search of the available licences indicates that there is more competition in the Highway 17 corridor and that there is no through service on Highway 11 between North Bay and Thunder Bay.
- (b) It would be expected that through class rate routes would be available via both the Northern Ontario International truck gateways such as Sault Ste. Marie, Pigeon River, Fort Frances and Rainy River, and the Southern Ontario gateways. This would in part contribute to a foundation for an efficient, economic truck transportation system.

However, through international class truck rates are not available on the Highway 11 corridor between locations north of North Bay and Hearst. In fact, other than for a few shippers located in Sault Ste. Marie, through international class rates are not available to Northern Ontario shippers via the Sault Ste. Marie Ontario gateway.



- (c) Most carriers with full-load Class C operating authorities from Southern Ontario origins have a restriction in the PCV operating licence north of North Bay on Highway 11. In addition, this corridor exhibits some of the highest truck-load and less-than-truckload freight rates experienced in Canada.

Finding this situation, the Ministry recommended that:

The Ontario Highway Transport Board should be given the resources to:

- (a) quantitatively analyze the existing "Class A" authority which currently does not allow communities en route on the Highway 11 corridor (North Bay to Thunder Bay) to be served;
- (b) study the impact of additional truck competition via the Northern Ontario truck gateways at Sault Ste. Marie, Pigeon River, Fort Frances and Rainy River;
- (c) quantify the impact of removing the restrictions on full load licences north of North Bay.

The Ministry further stated in the same report:

- (a) The through international truck class rates that are available to Northern Ontario shippers are via the circuitous Southern Ontario gateways such as Windsor, Fort Erie and Ivy Lea.
- (b) By virtue of their location many communities in Northern Ontario do not have a choice of transportation alternatives. Many of these communities are in fact captive to highway transportation and consequently pay freight rates well above the level normally enjoyed by other communities. The railways are subject to a ceiling on freight rates as they can charge no greater than 250 percent of variable cost. To be consistent, truck transportation should be subject to a maximum rate formula.

The report then recommended that:

The Ministry should investigate the possibility of amending The Public Commercial Vehicles Act in order to

- (a) ensure that truck freight rates reflect direct route mileage between origin and destination;
- (b) provide reasonable freight charges based on a maximum rate formula to and from centres that are captive to truck transportation.



That same report continued:

Northern Ontario, by its nature, has a preponderance of small shippers and merchants who cannot command sufficient volume to take advantage of rail carload or truckload freight rates. Pool car/truck operators in other regions of North America relieve this situation by gathering together less than full load shipments and consolidating or pooling these shipments and ultimately shipping them to a destination where the load is distributed to individual consignees. Although this kind of service was inaugurated in Canada shortly after World War I, in Northern Ontario it is only available from Toronto to Sudbury and North Bay and from various locations to Thunder Bay.

The Ministry recommended that pool car and pool truck rates and services should be encouraged to Northern Ontario communities.<sup>15</sup>

#### 3.3.3.2 The Respondents

One tariff bureau asked to comment on the noted report stated:

- (a) Rates published by this bureau do reflect direct route mileages.
- (b) Any formula developed to safeguard captive shippers must also protect the truckers from absorbing the higher operating costs required to adequately serve the more remote areas.

Forwarders are very astute businessmen and currently operate only between areas where there is a very high concentration of desirable freight. They are very selective and effectively "cream" the better traffic from highway operators. They are not compelled to serve outlying areas and thus enjoy a significant competitive advantage cost-wise over "A" carriers. As far as is known here, no forwarder has evinced any interest in serving areas north of North Bay although they are active between Toronto and North Bay/Sudbury. Pool car operations have been in effect at Thunder Bay for a good number of years.

Two members of this bureau, Alary Transport Limited and Star Transfer Ltd. (Ontario Northland Transportation Services), derive practically 100% of their revenues on traffic handled to, from and within the area north of North Bay. Dominion-Consolidated Truck Lines Ltd. also obtains a portion of its revenues in this territory. It would be manifestly unfair

to require these companies to forego any necessary rate increase in order to meet their constantly rising costs of operation.

Highway carriers should be treated no differently than any other profit-oriented industry so far as their northern operations are concerned. No special concessions are offered by other major industries, such as iron or steel manufacturers, automobile producers, food processors, etc., to their northern Ontario markets. To expect the trucking industry to subsidize situations beyond their control is downright unreasonable.

The taper principle referred to in the discussion relates to long distance hauling by the railways to and from Manitoba, Saskatchewan, Alberta, British Columbia and Eastern Canada, where a taper can be built into any increased rates. This procedure is not feasible in the relatively short-haul areas to and from northern Ontario.

The Bureau also wishes to offer its opinion concerning the External-Private Sector Recommendations made on page 24 of the report. The trucking industry has, for some time, been sensitive to the needs of shippers and receivers of freight in Northern Ontario and has reacted and will react, according to those needs.

To support the validity of this statement, Tariff 6-C (Groceries) 60-F (Paper) and 90-D (General Commodities), show commodity rates to, from and within points in Northern Ontario. Also items published in Tariff 1015-F and E.R.T. 1355 provide rates to and from points in Northwestern Ontario.

The relevant rates, published in the foregoing tariffs, reflect the mutually satisfactory results of negotiations carried on by shippers and carriers. Wherever traffic is available to truckers, every attempt will be made to reach a rate level acceptable to both parties.<sup>16</sup>

#### 3.3.4 Dr. Norman Bonsor's Study for the Ontario Economic Council

Dr. Bonsor makes the following observations:

The data clearly shows that rates for shipments originating in Northern Ontario destined for other parts of Canada are significantly lower than rates for shipments originating in other parts of Canada destined for Northern Ontario. In large amount this differential is due to the nature of production in the regional economy. A large proportion of total regional output can be classified as raw or fabricated materials. Because of the high volume of such shipments and actual or potential competition between transport modes, a high percentage of

regional output moves to market under agreed charge and commodity competitive rates, although the former dominates. As was shown earlier, the average rate per ton-mile for traffic moving under such rates is relatively low.

Rates on in-bound shipments are higher than the rates on out-bound movements for two reasons. First, a high proportion of goods moving into the region are manufactured goods or finished commodities. We have already shown that rates on such goods are considerably higher than rates on crude or semi-finished commodities. Second, most items moving into the region are in insufficient volume to obtain the benefit of agreed charge rates.

Our analysis of rates suggests that for the rail mode, rates on the major outputs of the regional economy moving from major production centres are not statistically significantly different from rates on traffic originating in other regions moving in similar volumes similar distances.

It has been noted elsewhere that highway rates in Ontario are amongst the highest in Canada. In Chapter 5 it was postulated that the major reason for this can be traced to the fact that the Ontario Highway (Transport) Board has a restrictive entry policy. A study the Ontario Ministry of Transportation and Communications found that one of the reasons for high truck rates on certain routes was the lack of intra-modal competition. The absence of vigorous competition in the Ontario trucking industry has far reaching consequences for the overall level of transportation costs. Since rail carriers vigorously pursue a value-for-service pricing principle, rail rates will be higher in the absence of competition in the trucking industry than when the trucking industry is competitive. Restrictions on the entry of carriers into the Ontario highway trucking industry thus can be seen as one of the causes for high freight rates - both road and rail - in the Province. Unfortunately, we were not able to examine the number and type of licences issued to carriers on specified routes in Ontario, and in consequence could not determine whether the high level of highway rates on commodities in-bound to the region was a direct result of a lack of competition. From a theoretical viewpoint, however, it appears that this is highly probable.<sup>17</sup>

### 3.4 Conclusions

"Costs" is a term which must be very carefully defined within the transportation field before general conclusions about the efficiency of a system are made. It must be clear what costs are under examination -



those for the carrier - those for the shipper or those for the consumer. Carrier costs are important in that higher costs will generally cause a desire for higher rates.

Production costs are a key ingredient in the determination of consumer price. Transportation's segment of production costs will vary, depending on the nature of the transportation required. The significance of that contribution will vary, depending on the goods. The higher the value of the goods, the less generally speaking is transportation's contribution on a percentage basis to total production costs.

One source states:

In the absence of effective competition, carriers may be in a position to extract a greater revenue per ton-mile if the value of the commodity is high rather than low...but the less transport costs are as a percentage of total costs (of production) the more inelastic will be the demand for transportation services. A doubling of transport rates on a million dollar computer is not likely to bring about a change in demand for transport services since transport costs are a very small portion of total costs.<sup>18</sup>

The smaller the percentage of transport cost is to total cost, the less the transportation rate or changes in it will affect consumer prices.

The significance of the variability is paramount. The effect of regulatory systems must be viewed in this context. It is important to note that costs, pricing and distribution policies of major manufacturers can affect consumer price to a far greater degree than transportation costs. One need only look to those transportation subsidies in Canada which have been applied without significantly reducing consumer prices in the target areas. This includes the Ministry of Transportation and Communications' program in Northeastern Ontario.



Studies are not conclusive about the level of rates in Ontario compared to other jurisdictions. It is imperative that study be continued in this area. An important consideration must be to compare rates on commodities which are moving. Rates established for goods showing a high volume of movements will be lower as a rule than rates where volume is low.

Regardless of general levels, it is clear that there are many anomalies with regard to specific rates. For example, it would cost a shipper \$15.26/100 pounds to ship a 350 pound casket from Toronto to North Bay. The rate from Montreal to North Bay is \$8.15. Similarly, the rate per hundred for the same casket from Toronto to Kirkland Lake, Timmins, Cochrane and Kapuskasing is more than twice the rate from Montreal to those same northern Ontario communities. For three caskets, the rate from Toronto is in some cases triple that from Montreal.

Many other examples could be cited, but the point is illustrated. In the absence of volume, rates tend to be high. With volume, they tend to be lower. Comparisons must take this into consideration. Nonetheless, there are situations where the rate structure appears not to be rational, a fact which should be reflected in future government study, consultation and policy.

It is likely that the current rate structure in Ontario has built in cross-subsidies. One witness stated "there is considerable cross-subsidization within both the LTL and TL rate structures... the same exists between LTL and TL rates. These conditions are simply facts of life and have stood in some form or other since freight rates were established."<sup>19</sup>

It is the Committee's view that:

1. Rates bear a relationship to cost which is not constant across all rate types. This is not limited to rates under which there is no volume of traffic.
2. It has not been proven that a reduction of carrier costs occasioned by a deletion of economic regulation of entry would by itself significantly affect carrier costs or rates or the use of private truck.
3. The effect of rates on consumer price varies and no single characteristic of that effect can be established or quantified for the wide range of production factors or consumer goods which are moved by highway in Ontario.

3.5 Recommendation

The Committee recommends that:

This Province's transportation pricing policies acknowledge the role of trucking rate levels in

- 1) modal choice
- 2) industrial, social and economic growth and development
- 3) the competitiveness of Ontario industry generally
- 4) the Province's current housing, industrial, population and employment policies.

## PART IV - CHAPTER 3

### REFERENCES

1. For example in certain situations Canadian Railways are limited in their rate to one which is 2.5 times variable costs. The Railway Act however includes some costs which are, in standard terms, fixed costs. Variable costs in this case are not "pure". For example interest expenses and depreciation are included (See Bonsor's Report to the Ontario Economic Council, Page 14).
2. Barrett, Colin. Theory & Practise of Carrier Rate Making Reprinted from Transportation & Distribution Management, Washington D.C. Page 2.
3. Ibid, page 3.
4. Op Cit Gillen Overview. Page 13
5. Ministry of Transportation and Communications, An Investigation of Freight Rates and Related Problems, Northern Ontario, March 1976. Page 9.
6. Op Cit., House Overview. Page 29
7. Bonsor, Dr. N.E. Transportation Rates and Economic Development in Northern Ontario. Prepared for the Ontario Economic Council Draft submitted to the Committee by O.E.C. August 19, 1976 Page 53.
8. Ibid, page 53.
9. Ibid, page 35.
10. Ibid, page 43.
11. Trimac Consulting Ltd., Operating Costs of Trucks in Canada; Prepared for Transport Canada, 1972.
12. Ministry of Transportation and Communications. Truck Transportation in Ontario. Phase 3; An Analysis of the Basic Rate Structure. Pages 22-24.

- ~~13.~~ Canadian Transport Tariff Bureau Association. A submission by R.K. House to R.A. Blackborow, Jan. 18, 1977.
14. Niagara Frontier Tariff Bureau. A letter from R.G. Gawley to B.B. Caldwell. October 18, 1976.
15. Op Cit., Ministry of Transportation and Communications, An Investigationed Freight Rates in the North. Pages 7-11
16. Op Cit., Bonsor, page 49.
17. Ibid.
18. Ibid.
19. CTTB. A letter from R.A. Blackborow to B.B. Caldwell. February 4, 1977. Page 1.



## CHAPTER 4

### TARIFF BUREAUX

#### 4.1 Introduction

##### 4.1.1 General

Tariff bureaux fall into two categories: Non-profit, carrier-owned; and profit-making, privately owned. The bureaux affecting the province of Ontario are generally of the first type. Most of these tariff bureaux encompass the following basic functions:

- (1) provision of a tariff publishing service for its carrier members;
- (2) the filing of tariffs with regulatory bodies such as the Ontario Highway Transport Board;
- (3) provision of consolidated tariffs to shippers for references;
- (4) provision of tariffs containing inter-line arrangements;
- (5) provision to keep individual carriers informed of the rates and rate changes of their competitors; and
- (6) provision of a forum in which carriers may review proposals for rate changes made by their competitors. <sup>1</sup>

The rates of most Ontario truck shipments are filed by separate rate bureaux which involve themselves with intra-provincial shipments, inter-provincial shipments and international shipments. The following have the main involvement with Ontario rates:

<u>Intra-Provincial</u>	<u>Inter-Provincial</u>	<u>International</u>
Canadian Transport Tariff Bureau	Canadian Transport Tariff Bureau	Niagara Frontier Tariff Bureau
Western Tariff Bureau	Western Tariff Bureau	Mid-Atlantic Tariff Bureau
	Quebec Transport Tariff Bureau	Mid-West Motor Freight Bureau.

#### 4.1.2 The Niagara Frontier Tariff Bureau

The Niagara Frontier Tariff Bureau, Inc. is a non-profit membership organization incorporated under the laws of the State of New York whose objectives are:

To maintain and operate a Tariff Bureau for the consideration compilation, publication and issuance of tariffs; for the maintenance of just and reasonable rates, ratings, charges, rules and regulations in connection with the carriage of freight traffic in interstate commerce within Niagara Frontier Territory as herein defined and to otherwise protect, promote, and advance the interests of its members as carriers of property.

Niagara Frontier Territory includes points in the Dominion of Canada and points in the United States insofar as traffic between the two countries is concerned.

The Bureau was organized in 1935 and incorporated in 1939. Presently 700 carriers participate in its tariffs of which 85 hold authority to operate in whole or in part of the Province of Ontario.<sup>2</sup>

#### 4.1.3 The Canadian Household Goods Carriers' Tariff Bureau

The background of the Canadian Household Goods Carriers' Tariff Bureau Association is as follows:

In 1962, the Canadian Warehousing Association recognized a need in the household goods moving industry for a special service, the principle function of which would be to act as attorney and agent for individual members of the household goods moving industry in regard to the filing of tariffs with such provincial regulatory authorities with whom filing was mandatory.

Although this specialized "Tariff Filing Service" was operated as an autonomous division of the Canadian Warehousing Association, certain difficulties were encountered in the conduct of its affairs which necessitated a divorce from CWA control and supervision. (The Canadian Warehousing Association was the subject of an investigation by federal combines officials. The members agreed to cease and desist practices which were alleged to be contrary to combines law.) This took place June 1, 1968, and the Canadian Household Goods Carriers' Tariff Bureau Association was incorporated by federal letters patent dated July 6, 1968 as a non-profit organization owned by and operated on behalf of its members.

Therefore, the Bureau has had fourteen years experience with matters pertaining to the compilation, publication and filing of tariffs with provincial regulatory authorities.

Initially, the Bureau membership was comprised of household goods carriers exclusively. Shortly after incorporation, requests from a number of other classes of public carriers to compile, publish and file tariffs resulted in amendment to the by-laws to permit membership by any class of public carrier. By virtue of powers of attorney vested in the General Manager of the Bureau, intra-provincial, interprovincial and international (Canada-United States tariffs are filed on behalf of over five hundred individuals, firms, partnerships and corporations of all sizes, with all provincial authorities with whom filing is mandatory. Of these, two hundred and forty-five are domiciled in the Province of Ontario.

#### 4.1.4 The Canadian Transport Tariff Bureau Association

The Canadian Transport Tariff Bureau Association "is a corporation without share capital, constituted under letters patent issued October 24, 1963 under Part II of the Canada Corporations Act. It is a non-profit organization, owned and operated on behalf of its carrier members."

The Bureau is not permitted to discriminate against any eligible applicant and must accept, without reservation, any carrier who qualifies for membership.

At this time, the Bureau has 251 members, the majority of whom are located in Ontario and Quebec.

The Bureau obtains its revenue through the assessment of fees to its members, based upon a percentage of the revenue derived from the use of bureau tariffs.

The Bureau publishes and files rates on behalf of its members, upon the instructions of its members. It performs an audit service of its members' records and, if necessary, reports violations to the governing regulatory bodies. It aids members to ensure that legal rates and charges are assessed and represents its members before the regulatory bodies.

It conducts continuing traffic studies, cost studies and obtains from many of its members quarterly financial statements which are summarized and made available to all participating members.

At present, the Bureau publishes 26 tariffs on behalf of its members. The main scope of tariff activity involves publications of rates within Ontario, between Ontario and Quebec, and between Eastern and Western Canada.

Tariffs published by this Bureau reflect the current rates charged by member carriers over the routes they operate, individually or by inter-line arrangements with other bureau members.

Rules and regulations are published in relevant tariffs to cover a wide spectrum of ancillary services and charges therefor. <sup>4</sup>

#### 4.2 The Activities of Tariff Bureaux

A great deal of controversy surrounds the tariff bureaux. It centres on whether or not the bureaux fix rates of member carriers and whether or not they or their members exert pressure on dissident members



to adhere to the filed rates. The bureaux deny there is rate fixing.

Yet contrary views continue to be held. One brief stated:

Although the members did not advocate the abolition of these bureaux, they felt that the tariff bureaux discourage independent filing by the members and generally inhibit price competition within the motor carrier industry. Some members felt that the bureaux served useful purposes such as the publication of through rates where more than a single line haul is required. However, it is important to note that our membership felt very strongly that the tariff bureaux should make available to the public, minutes of the rate committee meetings and also that they should have a prescribed maximum period of time<sup>5</sup> for the processing of rate proposals to final disposition.

There is some common ground between the activities of the various bureaux about which the Committee has knowledge. The Canadian Transport Tariff Bureau has three general rate committees - one each for intra-Ontario, Ontario-Quebec and East-West sectors. These committees meet twice a month to consider and advise with respect to rate changes which have been received. Shippers are "always welcome to attend any General Rate Committee meetings to discuss proposals they have advanced."<sup>6</sup>

So, too, the Niagara Frontier Tariff Bureau will accept a proposal from any carrier or shipper. There, proposals are heard by a Standing Rate Committee, a staff body with the power to approve, disapprove or refer the proposal to the General Rate Committee. It in turn is composed of carrier members and meets each six weeks.

Prior to the proposal being heard by the Standing Rate Committee, the proposal is docketed. Notice of the hearing is distributed to subscribing carriers and shippers.

If referred to the General Committee, proposals are thoroughly researched by staff. Votes at the meeting are by secret ballot and a

simple majority is required to process the proposal.<sup>7</sup>

All the bureaux stress that members may file a rate different than the main tariff rate. This is referred to as the members' right of independent action.

The Report examines the activities of the Canadian Transport Tariff Bureau in more detail because the rates it deals with have the most effect on Ontario movements. It discusses the Niagara Frontier Tariff Bureau because its tariffs cover a large percentage of Ontario-U.S.A. movements.

#### 4.3 The Activity Scope of the Canadian Transport Tariff Bureau and the Niagara Frontier Tariff Bureau

The Canadian Transport Tariff Bureau has 251 members. The revenue earned by its members through Bureau tariffs has been estimated by the Bureau staff at approximately 85% of the total revenue earned by the Ontario-based for-hire trucking industry. Bureau membership includes 40 of Ontario's largest carriers, 10 of whom gross over \$20 million in revenue per year. The Members pay fees to the Bureau based on revenues earned from bureau tariffs. This averages out to \$96.95 per month per member.<sup>8</sup>

The Bureau publishes some 1700 rates in 26 tariffs. All its tariffs are available to the shipping public and current publications are distributed to over 1400 mailing addresses.<sup>9</sup> Of the 1700 main bureau rates filed, approximately 500 represent "flagouts", where independent action has been taken by the carrier.<sup>10</sup>

Approximately 98% of the item on the Bureau's dockets are for rate decreases and approximately 80% of those proposals are taken to the filing stage.<sup>11</sup> A change in rates takes about 20 days to process within the Bureau.

The principle of independent filings is important. Table 1 illustrates the volumes shipped expressed by weight and revenue by rate structure. These data were provided by the Canadian Transport Tariff Bureau and applies only to members of that Bureau. Readers are reminded of the estimate that 85% of Ontario-based carrier revenue is generated by Canadian Transport Tariff Bureau members. These figures indicate a higher percentage of traffic moving under class rates than might have been expected from general literature.

Tariff bureaux usually seek general increases twice a year. The Canadian Transport Tariff Bureau, for example, recently filed tariffs which increased truck rates on a wide range of commodities by 9%. These new rates, effective November 1, 1976, followed an average 6% increase in the spring. The increases represented a straight pass through of costs to reflect increased labour and fuel costs.<sup>12</sup>

Rates were not increased on all commodities, presumably because the competitive situation would not allow it. There were a number of independent filings from the main tariffs.

The Niagara Frontier Tariff Bureau filed a general increase effective October 1, 1976. Increases affected 16 tariffs and individual rates increased from 1% to 4.5%. The increases applied on traffic moving between points in the United States and points in Canada.

The increases sought to recoup labour expenses which are subject to substantial increase in Canada under present existing union contracts. In addition, the increases sought to recoup a portion of the non-labour expenses which this industry has been absorbing in their entirety for almost the past year...The labour increase became effective within Ontario and within Quebec on October 1, 1976, and on November 1, 1976...The composite of these cost increases is in excess of 4.3% while the proposed adjustment will produce a revenue increase of 4.3%.<sup>13</sup>

TABLE # 1

CANADIAN TRANSPORT TARIFF BUREAU ASSOCIATION

SUMMARY OF INTRA-ONTARIO TRAFFIC  
1975 CALENDAR YEAR

Type of Rate	Shipments		Cwt. (Actual)		Revenue			
					Your		Through	
	#	%	#	%	\$	%	\$	%
Class	978,213	564	13,720,666	309	38,318,785	509	41,026,886	524
Commodity	723,460	417	28,229,263	637	36,002,269	478	36,212,771	463
Other types*	32,352	19	2,387,145	54	942,511	13	998,901	13
	<u>1,734,025</u>	<u>1,000</u>	<u>44,337,074</u>	<u>1,000</u>	<u>75,263,565</u>	<u>1,000</u>	<u>78,238,558</u>	<u>1,000</u>

Interlining Ratios

Intra-Ontario	96.2%	100.0%
Ontario-Quebec	91.6	
Ontario-Western Canada	92.9	
International	69.0	

\*Bulk, Piggyback, Unclassified



To the Committee's knowledge, there have been no independent filings from these tariffs or any others filed by the Niagara Frontier Tariff Bureau.

#### 4.4 The Right of Independent Action

The concept of independent filings is generally encouraged because it encourages competition. Tariff bureaux, as has been noted, have been accused by some as being anti-competitive. Independent filings must occur. The concept of independent action is in a sense misleading. For example, an independent filing may take the form of a commodity rate being filed where there was not one previously. Class rates are filed for virtually all points in Ontario. Commodity rates, which are generally lower, are filed where there is sufficient volume of a particular commodity moving to justify or warrant the commodity rate. Thus, while a commodity rate filed by one or two carriers who serve an area may be independent in the sense that other bureau members do not subscribe to it, it is not injecting competition into the rate-making process. Such a commodity rate gives the shipper his due; it does not necessarily reflect high degrees of competition to move that shipper's product; neither does it necessarily reflect any competition on the cost side amongst carriers.<sup>1/</sup>

Members of the Canadian Transport Tariff Bureau appear to exercise this "right" quite liberally.

With respect to Tariff 90-D, covering general commodity movements in Ontario, 43% of the contained rates are independent filings.

For other tariffs filed by the Bureau, the figures are:

<u>Tariff No.</u>	<u>Items</u>	<u>I/A's</u>	<u>%</u>
6-C Groceries	295	126	42.7
31-M Iron and Steel	228	104	45.6
60-F Paper	205	88	42.9
100-M Auto Parts	191	69	36.0
	-----	-----	-----
	919	387	42% average <sup>14</sup>

Source:

Canadian Transport Tariff Bureau

The Ontario Highway Transport Board has estimated that 20% of those who are required to file do so independently.<sup>15</sup>

It may well be that the competitive effect on rates, such as it is, is derived more from the exempt carriers and those outside the bureaux than from the right of independent action of bureaux members.

However, one Bureau commented:

In addition to C.T.T.B. members, approximately 50 general freight carriers file their rates through the Canadian Household Goods Tariff Bureau Association. It is suggested that the majority of those who have not filed through a bureau do not play a particularly important part in the Ontario transportation scheme. It is most difficult to generalize as to whether their rates are higher or lower than those who publish through bureaux. The essential point is that, ordinarily, the lowest rate, consistent with the required service, tends to move traffic regardless of bureau affiliation.<sup>16</sup>

In the Committee's view, the right and practice of independent actions must be preserved for bureaux members.

#### 4.5 Anti-Combines Legislation

Controversy is not new to the tariff bureaux. It is important to note the differences between Canada and the United States in the area of anti-combines law.

##### 4.5.1 The United States

Currently, tariff bureaux in the United States are immune from anti-trust laws. Section 5(a) of The Interstate Commerce Act specifically exempts them and their activities from prosecution. The Reed-Bulwinkle Act passed in 1948 exempted tariff bureaux (section 5(a) Associations) from price-fixing provisions of federal and state laws. The exemption is not a blanket one, because organizations must comply with certain statutory provisions and must be approved by the Interstate Commerce Commission.

The motor carrier industry in the United States is represented most prominently by ten or twelve major regional associations. There are three organizations for the railroad industry and freight forwarders and watercarriers have their own groups on a nationwide basis. Airlines and ocean shiplines are not covered by section 5(a).<sup>17</sup>

It is important to note not only the exemption, but also the fact that bureaux activities are closely regulated by the Interstate Commerce Commission. Section 5(a) allows that virtually anyone may initiate a rate proposal. It requires notice of the proposal to be published. The decision on a proposal by law must be made by the carrier membership group. Shippers, carriers and other interested parties have an opportunity to present their views on any proposal. Public hearings must

be held to hear all related views although decisions are made in camera. The law requires that formal minutes, as opposed to verbatim transcripts, be made of hearings before the bureaux. In addition, Commission representatives may attend all rate bureau meetings. The Commission does not require the filing of correspondence and documents concerning all rate bureau meetings.

There are appeal procedures for those dissatisfied with the membership committee's ruling. Appeals to other, higher membership Committees may be made. As well, Section 5(a) allows any shipper the opportunity to make a proposal of his own.

The right of independent action is guaranteed by Section 5(a). A carrier may either "flag out" of the rate proposal and thus not participate in the filed tariff or he may arrange for the publication of his own, independent rates that apply to himself.

Tariffs must be filed with the Interstate Commerce Commission normally 30 days before they become effective. This period varies if a general increase is sought by a major bureau or if the Commission specifically grants permission for a lesser period. It takes a specific action by the Interstate Commerce Commission to prevent a motor carrier rate increase (as distinct from rail rate changes).

Protests against proposed increases will be received by the Interstate Commerce Commission within predetermined time frames and a hearing may be held to require the bureau to justify the change to the Commission.

The activities of the tariff bureaux in the United States have nonetheless remained the centre of some controversy. The United States Department of Transportation believes that they are anti-competitive.



The Motor Carrier Reform Act, sent by President Ford to Congress November 13, 1975, proposed several sweeping changes to the role of the bureaux. The Department stated:

This bill eliminates anti-trust immunity for anti-competitive ratemaking activities. Rate bureaux can continue to provide useful administrative services such as publishing tariffs and assisting in determining joint rates and through routes.

The Department stated further:

The proposed legislation will prohibit rate bureau rate making activities which stifle competition and discourage innovation<sup>18</sup>

As well, the bill provided for:

A gradual phasing of increased pricing flexibility for motor carriers...Carriers will be permitted to adjust rates up or down within specified percentages without fear<sup>19</sup> of Interstate Commerce Commission suspension.

These and the other changes proposed by The Motor Carrier Reform Act not enacted at the date of writing, prompted a re-evaluation of much of the current United States regulatory law. Amongst several other actions, the Interstate Commerce Commission instituted ex parte proceeding No. 297 "Rate Bureau Investigation". The Commission's decision was reported in January 1976. The investigation delved into many areas of bureaux activities.

The Commission had held previous hearings on rate bureaux activities and had made a report in June of 1975 which included 26 findings. With certain clarifications, the Commission reported in 1976 (351 ICC 297) that the findings in the 1975 report (349 ICC 811) were confirmed.

Those 26 findings were as follows:

1. Rate bureaux assist the making of appropriate rates.
2. Procedural changes would foster actions more favorable to bureau members, shippers and the general public; such changes being contained in the body of the report.
3. The right of independent action does not adversely affect the rate structure.
4. A system need not be established by the Commission to monitor public hearings before rate bureaux, but that formal minutes, and not verbatim transcripts, are required of rate committee proceedings.
5. Commission representatives may attend all rate bureau meetings; but that copies of correspondence and documents concerning all rate bureau meetings need not be filed with the Commission.
6. A uniform system of accounts for rate bureaux will be promulgated.
7. Rate bureaux are not prohibited from furnishing technical and professional services to other bureaux or nonmembers provided that the limitations expressed in the report are observed.
8. Rate bureaux may not invest in another commercial business, whether related or unrelated to its primary function of processing and publishing rates and related matters for member carriers.
9. Rate bureaux are prohibited from acquiring other rate bureaux without prior Commission approval.
10. Rate bureaux should not be profitmaking enterprises.
11. A carrier member of a bureau, which carrier is affiliated in any way with a shipper, may not serve on a bureau's board of directors, general rate committee, or any other committee which has an effect, either directly or indirectly, on the ratemaking function of the bureau without specific prior Commission approval.
12. A maximum period of 120 days should be prescribed for the processing of proposals to final disposition.
13. Public notice of proposals need not identify the proponent.

14. Rate bureaux are prohibited from broadening the territorial or commodity scope of an individual rate proposal without prior adequate notice.
15. (Procedure in the particular proceedings)
16. (Procedure in the particular proceedings)
17. Docketing of rate bureau proceedings with respect to general rate increase proposals need not be mandatory.
18. The Commission need not obtain and publish reports of the deliberations within the industry concerning the matter of general increases.
19. The various rate bureaux need not join in seeking general rate increases.
20. The various rail rate bureau<sup>x</sup> are not required to substantiate general increases on a regional basis only, but that regional costs should be presented in a more explicit manner.
21. Rate bureaux are prohibited entirely from protesting proposals of carrier members, and are not merely limited to instances in which the proposed rate is less than long-term variable cost or any other specific instance.
22. Rate bureaux should be prohibited from discouraging independent action proposals of member carriers in any way, including the protesting of the filing of any rates pursuant to such action.
23. Rate bureaux should be prohibited from discouraging members from publishing individual tariffs.
24. Immunity from anti-trust laws shall be continued.
25. Immunity from the anti-trust laws shall continue to be extended to agreements with respect to proposals of single-line movements.
26. Additional legislation is not necessary, and need not be sought, to better effect the goals for which section 5(a) was enacted.

While some substantial reform resulted from the 1975 investigation, the effects to date of the Department of Transportation actions and the Interstate Commerce Commission reactions have been in a sense negligible.

Tariff bureaux continue to operate under guidelines, exempt from anti-trust prosecutions. They have, however, been subject to extensive scrutiny.

The bureaux and the Interstate Commerce Commission have taken a strong stand on the necessity of bureaux in the United States. Regardless of the law and rules under which the bureaux must operate, the Government has recognized and sanctioned the principle of collective rate-making. Discussion of rates between carriers and the joint establishment of rates is not only allowed, it is promoted by the exemption from anti-trust law.

The Interstate Commerce Commission has stated:

The motor carriers are charged in the first instance with the responsibility of publishing just, reasonable and non-prejudicial rates. The carriers cannot effectively meet the requirements of the law if each is compelled to go it alone without a reasonable degree of consultation and agreement with other carriers.<sup>20</sup>

It is important to note several things about the American experience. First, rates filed by carriers are controlled and carriers are prohibited in transportation law from charging prejudicial rates. There is, therefore, little reason to make them subject to anti-combines legislation - to do so would expose the bureaux to two laws, both of which are designed to the same end.

In Canada, the situation is substantially different.



#### 4.5.2 Canada and Ontario

Rates are not controlled in Ontario. Carrier rates need not be "just, reasonable or non-prejudicial". Ontario transportation law makes no mention of tariff bureaux or their activities. They have, however, grown to a position of some prominence within the transportation field.

The National Transportation Act, section 40(2) does recognize their presence;

Where the person operating a motor vehicle undertaking to which this Part applies is a member of an association representing persons carrying on like operations, the association may, in accordance with such regulations as the Commission may make in that regard, prepare and file with the Commission a tariff of tolls on behalf of such person.

It is interesting to note as well, the following provisions in The National Transportation Act:

The Commission may make orders with respect to all matters relating to traffic, tolls and tariffs of a motor vehicle undertaking to which this Part applies, and may disallow any tariff of tolls or any portion thereof

- ✓(a) that the Commission considers to be not compensatory and not justified by the public interest; or
- (b) where there is no alternative, effective and competitive service by a common carrier other than another motor vehicle carrier or a combination of motor vehicle carriers, that the Commission considers to be a tariff that unduly takes advantage of a monopoly situation favouring motor vehicle carriers;

and may require the person operating the motor vehicle undertaking to substitute a tariff of tolls satisfactory to the Commission in lieu thereof, or the Commission may prescribe other tariffs in lieu of the tariff or portion thereof so disallowed. 1966-67, c.69, s 33.

Notwithstanding any previous contract or commitment or any other general or special Act or provision, no person operating a motor vehicle undertaking to which this Part applies shall issue free or

reduced rate transportation except with the approval in writing of the Commission and under such terms, conditions and forms as the Commission may direct. 1966-67, c.69,s.34.

In drafting Part III of the Act, the Federal Government recognized the presence of tariff bureaux and the need to be able to control prices which were not compensatory or which were formed from a position of monopolistic power. Nothing, however, in The National Transportation Act contemplates an exemption from anti-combines legislation.

However, amendments to The National Transportation Act are now before Parliament. Bill C23, January 27, 1977 would amend Section 3 of The Act to include a new Section 3.3.1:

The Governor in Council may, if he is satisfied after due consideration of the desirability of maintaining competition that an exemption as referred to in this subsection is necessary for greater efficiency or economy of transportation, by order with the approval of the Minister of Transport and the Minister of Consumer and Corporate Affairs and after the Director of Investigation and Research appointed under The Combines Investigation Act has been notified of the terms of the proposed order, exempt from the application of section 32 of The Combines Investigation Act any conduct that is imposed or required by an order or regulation made by the Commission that is specifically referred to in the order made pursuant to this subsection and that was made by the Commission for the fulfilment of a direction issued to it under section 3.2 of this Act.

In any prosecution under subsection 32(1) of The Combines Investigation Act, the court shall not convict an accused if the conduct that is in question in the prosecution is conduct that is exempted from the application of section 32 of that Act by an order made pursuant to subsection (1).

Canadian anti-combines legislation has been recently changed.<sup>21</sup> Bill C2 enacted by Parliament has significantly amended The Combines Investigation Act. The Act in Section 2 now defines a product as including an "article and a service". A service includes one "of any description, whether industrial, trade, professional or otherwise".

Part V of The Act sets out several offences in relation to competition, under the column notations of conspiracy, bid rigging, illegal trade practices, misleading advertising, referral selling, bait and switch selling and sale above advertised price. There appears to be a suspicion in the minds of some that, since services are now included in The Act, and since a service would include the provision of Transportation, the tariff bureaux activities may offend at least the conspiracy provisions of The Combines Investigation Act.

It would be clearly inappropriate for the Committee to express any opinion.

No bureau or bureau member has ever been convicted in this country of any offence relating to restraint of trade or combines-trust legislation. Transportation-related groups and bureaux have been investigated on several occasions and some have faced cease and desist orders from federal officials.

The Committee is given to understand the Federal Government through the Ministry of Consumer and Corporate Affairs did in the summer and fall of 1976 seize documents and records from at least two tariff bureaux and some member carriers. The noted Ministry must be assumed to have taken this action as part of an investigation under The Combines Investigation Act. To date, there have been no charges laid. Officials of that Ministry would not comment to the Committee on the nature or results of the investigation. No conclusion is possible at this time.

More recently, federal combines officials have seized records from the offices of the Greater Ottawa Truckers Association. That association has been presented with the alternatives of facing an investigation

up to two years in length which may result in charges being laid or a meeting before the Director specified in The Act to discuss terms for a cease and desist arrangement.<sup>22</sup>

This is rough justice and, given such an approach, it is clear why no convictions have been rendered against transportation service organizations. Why the Federal Government has taken this action as a matter of priority at this time is not understood by the Committee.

The Association under investigation has a membership consisting largely of independent dump truck owners. It is unlikely that they will be able to afford to defend any court action and thus face the almost inevitable result of an administrative action against their alleged wrongful activities. Justice is not well served by such a "choice". The Committee notes that practices similar to those of this Association are carried on by associations of dump truckers with apparent impunity in Quebec. Ontario trucks in the area are in a very difficult situation if they cannot compete on an equal basis.

The Committee was advised by the Ministry of Consumer and Corporate Affairs that further legislation to clarify certain points is now under consideration. Of immediate concern are contemplated provisions to clarify the position of certain industries which are subject to government regulation.

The issue is succinctly put by the following:

It has been held that commercial activities that are effectively regulated by a public authority are not subject to the provisions of The Combines Investigation Act. In *Regina v. Canadian Breweries Limited*, Chief Justice McRuer of the Supreme Court of Ontario stated:

When a Provincial Legislature has conferred on a Commission or Board the power to regulate an industry and fix prices, and the power has been exercised, the Court must assume that the power is exercised in the public interest.



In such cases, in order to succeed in a prosecution laid under The Combines Act with respect to the operation of a combine, I think it must be shown that the combine has operated, or is likely to operate, so as to hinder or prevent the Provincial body from effectively exercising the powers given to it to protect the public interest. (Regina v. Canadian Breweries Limited, 126 C.C.C.; 133 at page 146.)

It should be noted, however, that The Act may apply to other activities of the same industry that are not so regulated. Chief Justice McRuer went on to say:

There may, however, be areas of competition in the market that are not affected by the exercise of the powers conferred on the Provincial body in which restraints on competition may render the operations of the combine illegal.

A restraint to competition may also be removed from the purview of The Act if it is specifically authorized by a valid statute. The Supreme Court of Canada has held that, notwithstanding certain restrictive features, a scheme under farm products marketing legislation was not in conflict with The Combines Investigation Act, Kerwin, C.J.C. stating:

With respect to that Act and also to the sections of the Criminal Code referred to, it cannot be said that any scheme otherwise within the authority of the Legislature is against the public interest when the Legislature is seized of the power and, indeed, the obligation to take care of that interest in the Province. (Re The Farm Products Marketing Act, R.S.O. 1950 C.131 as amended (1957) 7 D.L.R. (2d) 257 at page 265.)

The Act does not apply to combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees, nor does it apply to agreements between fishermen or associations of fishermen and fish buyers or associations of buyers regarding prices to be paid fishermen.

The Federal Government has stated the following about the amended

Section 32:

The most usual violation of this section involves a price-fixing agreement among those supplying a product to a market. If, for example, lawyers in a particular area agreed among themselves not to undercut a schedule of fees for real estate work or the settlement of estates, the situation would be likely to give the Director reason for the initiation of an inquiry, and, if evidence were produced to show that this in fact was done, the participants could be

found guilty of an offence. Similarly, if the television repair firms in a city agreed on a minimum charge or series of charges, the same process could ensue.

A price agreement is not the only kind of arrangement, however, that could be found to violate the section. An agreement to share business or allocate customers could, because of its anti-competitive result, be found to be illegal.

The Director has been asked by a number of groups in the service industries whether the issuance of a suggested list of charges might amount to an offence. The reply has been that while the issuance of such a schedule might not in itself be shown to be a violation of section 32, it certainly involves dangers of that kind. If, for example, it was issued by arrangement among those providing the service in question in the area, in the expectation that it would be followed or substantially followed, there would be a strong possibility that the arrangement could be held to be one that violated The Act. That possibility would be strengthened if in fact the suggestions were substantially observed.

In some of these inquiries it has been represented that many members of the industry require such guidance because they do not individually have facilities for calculating a proper rate. The courts have held, however, that it is not a defence to a charge of unduly lessening competition to show that the arrangement was advantageous or necessary to the business interests of the parties to it. (Rex v. Stinson-Reeb Builders Supply Co. 1929 (S.C.R.276)<sup>23</sup> and Rex v. Canadian Import Co. et al (1934) 62 C.C.C. 342.

The issue is complex and the degree to which government regulation of an otherwise anti-competitive activity would exempt it from the federal law is not clear. There is enough doubt however in the minds of Ontario truckers and tariff bureaux that some have strongly recommended some form of rate appeal or rate control by the Province.

One tariff bureau commented:

The Bureau is concerned that their rate publishing procedures may fall within the purview of The Combines Investigation Act.. It has been held that commercial activities that are effectively regulated by a public authority are not subject to the provisions of The Act. It is with this thought in mind that the Bureau, on behalf of its members, wishes to put forth its recommendations that...an appeal tribunal be established.<sup>24</sup>

It is interesting to note, given the activity of the federal government in the area of anti-combines law, that those trucking firms which are owned by the federal government through Canadian National Railways file rates through tariff bureaux. One such bureaux, as has been noted, is being investigated at the time of writing.

#### 4.6 Conclusions

While the Committee's views on rate control/review or appeal are dealt with in the next chapter, it is possible at this time to weigh the other proposals put forward in public hearings regarding rate bureaux activities.

Whether or not bureaux staff actively influence rate, the research and information presented to members on the rate increase needed to cover costs cannot help but influence members. Similarly, any discussion between carrier members about appropriate rate levels cannot help but influence the thinking of other carriers.

Some allege that tariff bureaux members tend to publish rates at a level high enough to allow the least efficient member to make a profit. Others say that the more powerful carrier members can influence the smaller members.

Regardless of the extent to which such distasteful practices exist in certain bureaux activities, other bureau activities benefit the shipping public and public in general.

Such benefits have been well documented in the past. Publication of consolidated tariffs makes reference simpler for shippers and governments; On request, the bureaux provide expert advice to assist members in determining costs which allows objective decisions to be made with regard to rates, they facilitate joint and through rate establishment which allows any trucker to ship goods to virtually any destination published in bureau tariffs, on an interline basis, knowing both the rate and how it will be pro-rated between the different truckers; they facilitate through rates which are generally less than the combination of local rates over the same route. Bureaux also now provide a forum for shippers to discuss proposals and problems. These activities should be preserved.

#### 4.7 Recommendations

The Committee recommends that:

1. Regardless of any activity of the Federal Government, certain tariff bureaux activities be retained. These would include, but not necessarily be limited to, the ability to
  - i) provide technical rate-making advice on request to individual members



- ii) file tariffs of tolls on the instruction of members
  - iii) promote the inter-lining of movements between members and non-members
  - iv) promote the filing of through and joint rates between members and non-members
  - v) promote and conduct rate and traffic research
- 2. Bureaux should actively promote the discussion of rate-related problems with the shipping public.
- 3. Carriers filing through a tariff bureau not be permitted to amend an existing tariff through issuance of a supplement changing rates or rules, unless such is actually an addendum to published rates, rules or ancillary services. Regulations provide that when 5 such addenda have been issued to an existing tariff or at any time so required by the Board the tariff must be consolidated and refiled as a new tariff.
- 4. Filings by tariff bureaux on behalf of stated members who filed a suitable power of attorney with the bureau be recognized in law.
- 5. The schedule of fees for the filing of tariffs contained in Section 33 of the Regulations pursuant to The Public Commercial Vehicles Act be amended to provide an appropriate schedule of fees when filings are made by a tariff bureau on behalf of its members.
- 6. Where a bureau files more than one tariff, a fee be assessed against each filing; that it be mandatory that two or more carriers which are not members of the same tariff bureau but which concur in a common rate file with the Board signed concurrences. In such instance as two or more bureau-member carriers file a common rate through the bureau, it shall be the responsibility of the bureau to provide a complete listing of all carriers participating in the common rate.
- 7. All tariff bureaux which file on behalf of members with the Ontario Highway Transport Board, on request of the Board, make available formal minutes of its Rate Committee meetings. Minutes so filed should be for the sole use of the Board and/or the Ministry of Transportation and Communications and be treated as confidential.

8. The Board be authorized to appoint a member to attend any Rate Committee meeting and the Committee shall facilitate such attendance.
9. Bureaux be prohibited from discouraging independent action proposals of member carriers.

## REFERENCES

1. Op Cit., Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 1, Page 93.
2. Niagara Frontier Tariff Bureau, Brief, July 13, 1976, Page 1.
3. Canadian Household Goods Tariff Bureau Association, Brief, June 30, 1976. Pages 1 - 3.
4. Canadian Transport Tariff Bureau Association, Brief, July 1976, Pages 1 - 5.
5. Op Cit., C.I.T.L., Brief #1, Page 11.
6. Op Cit., C.T.T.B.A. Brief, Page 10.
7. Op Cit., Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 1, Page 96.
8. C.T.T.B.A. Oral testimony of R. A. Blackborow, January 1977. The actual breakdown submitted by letter dated February 1977.

<u>MONTHLY FEES</u>	<u>NO. OF MEMBERS</u>
up to and including \$25.00	119
from \$ 26.00 to \$ 50.00	46
from \$ 51.00 to 75.00	23
from \$ 76.00 to 100.00	15
from \$101.00 to 200.00	18
from \$201.00 to 400.00	11
from \$401.00 to 600.00	10
over 600.00	<u>9</u>
Average \$ 96.95	251

9. Op Cit., C.T.T.B.A. Brief, Page 4.
10. C.T.T.B.A. in oral testimony, January 1977.
11. Ibid.
12. Ibid.

13. N.F.T.B. - Statement of Justification for Adjustments in various tariffs, August 18, 1976, Pages 3 - 4.
14. C.T.T.B.A., Letter from R. A. Blackborow to B. B. Caldwell, February 4, 1977, Page 3.
15. Telephone conversation B. B. Caldwell and E. J. Shoniker, January 1977.
16. Op Cit., Letter from C.T.T.B.A. to B. B. Caldwell, February 4, 1977, Page 2.
17. Op Cit., Barrett, Colin Theory and Practice of Carrier Ratemaking.
18. U.S. Department of Transportation, Press Release 1976.
19. U.S. Department of Transportation Fact Sheet regarding Motor Carrier Reform Act, November 13, 1976.
20. Op Cit., I.C.C. letter to Hartke, June 15, 1976, Page 43.
21. At the time of writing, yet further changes to the Combines Investigation Act were before the Federal Parliament. These latest amendments would inter alia allow mergers creating a monopolistic or oligopolistic supply side of the market where it would result in more efficiency.
22. Greater Ottawa Trucker's Association, Letter from L. Sauve to B. B. Caldwell, March 9, 1977.
23. Department of Consumer and Corporate Affairs, application of The Combines Investigation Act to services, April 1976, Page 2.
24. Op Cit., C.T.T.B.A., Brief, Pages 12 and 13.



## CHAPTER 5

### THE CONCEPT OF RATE CONTROL

The price of transportation service is influenced -- as are the prices of other products and services being supplied, by the degree of competition in the market. That is, transportation rates are directly affected by the presence of effective competition between carriers. In an economically regulated environment, competition can be injected into a market by the regulatory board. This can be done where a lack of competition does exist. It has been done in the past by the Ontario Highway Transport Board with resultant decreases in rates in an area or over a route. Similarly, some European countries allow private carriers to return haul another person's goods. Such competitive injections are controlled by the Government. Through such injections, rates can be controlled or more properly, rates can be influenced. Notwithstanding this significant power of the Board to influence rates through licensing, a more active program may also be required.

"Rate review" or "Rate control" is thought of as an active process exercised by a government specifically with the intent of influencing the rate making and filing systems. It is the concept of such a more active program that is examined below.

### 5.1 The Concept

The concept of controlling prices is distasteful to some and desirable to others. Governments around the world are becoming more and more involved in the market place, if not through the control of entry into certain industries then through performance and environmental standards and in some cases, through control over the price of a product or service.

Certainly, price control is common with what modern societies have come to regard as public utilities. The vast majority of telephone rates are controlled by the Canadian Radio and Television Commission. So too are telecommunication rates and cable television rates. The Government of Canada has legislated guidelines for railway rates and controls airline prices through the Canadian Transport Commission. Rates or prices for many agricultural products are directly set or influenced by government marketing boards.

The prices of many other goods and services are influenced through consumer protection legislation. Interest rates are subject to certain laws and strongly influenced by government action.

No better example of government involvement in the market place exists than the Canadian subscription to a program of wage and price controls.

Controls on prices of public utilities, transportation services and agricultural products are not unique to Canada. They are common amongst other countries in the Western World. Although the systems

may differ, government presence is a fact. Transportation prices or rates are controlled to some degree in most western countries. Rail, air and truck rates are controlled in the United States.

Within the Benelux countries, (Belgium, the Netherlands and Luxembourg) certain coal and steel transportation rates are controlled. Movements of goods between European Economic Community member countries are subject to bracket tariff control, (a minimum and maximum tariff are established).

In Canada, Quebec, Saskatchewan and Manitoba exercise control of some truck rates; Ontario controls bus rates only.

There are as many rationales for government involvement in rates as there are systems of involvement. Regardless of the strength of the argument to invoke or continue controls, there will be a considerable body of people who oppose the action in principle. This is particularly true in the case of the regulation of motor carrier rates.

The Committee is not aware of any jurisdiction where truck rates are regulated or controlled whose process is not the subject of criticism. Rate regulation or rate control is a contentious topic. It necessitates more bureaucracy, it is an intrusion into the market place which some say is unwarranted.

This report has referred to The Motor Carrier Reform Act introduced in the United States. It was designed by the U.S. Department

of Transportation to make the motor carrier industry more efficient by making it more competitive. While the Department of Transport saw what it considered to be a number of problems with the existing regulatory process, many of the evils which it saw were caused or at least heightened by the system of rate controls as established.

The Department of Transport stated at one time about The Act:

"It will contribute to the economic health of the industry by increasing the freedom to adjust rates to changing economic conditions...the bill provides for increased pricing flexibility for motor carriers...rates which are above a carrier's variable cost may not be found to be too low and it allows greater flexibility in initiating downward pricing. <sup>1</sup>

The proposal would have increased flexibility in pricing but at the same time, would have established guidelines for motor carrier rates. The rates would be adjustable in the short term as follows:

Carriers will be permitted to adjust rates up or down within specified percentages without fear of Interstate Commerce Commission suspension. (7% in year one; 12% in year two; 15% in year three and 15% upward flexibility annually with no limit downward thereafter.) The bill also sets a 7 to 10 month time limit on Interstate Commerce Commission consideration of rate cases. <sup>2</sup>

The Interstate Commerce Commission on the other hand, felt that the Department of Transport bill "would effectively remove one of the most important public protections in The Interstate Commerce Act". <sup>3</sup> The Commission recognized the need for a remedy for shippers which suffer damages as a result of payment of an unlawful rate. In fact, through the years the Commission proposed statutory amendments to



The Act to tighten its remedial controls, particularly through a requirement that motor carriers be required to keep account of all amounts received from a rate which was subject to an Interstate Commerce Commission investigation and an authority for the Commission to order reparations of charges ultimately found not to be just and reasonable. Both these provisions applied to railways for years. Although the Commission tried since 1935, it was not until 1965 that Congress passed the amendment to section 204a of The Act to permit judicial proceedings for reparations.

It is important to note the philosophical battle which has been waged in the United States over the question of rate controls.

One must also reason that any form of rate appeal or rate control, to the extent that carriers are often required to justify rate changes publicly, will have an overall effect on the costs of the carrier. If more filings are required and frequent appearances before the regulatory body result, then experts will be required by the carriers. The Committee finds the principle of the results of the Sloss-McLachlan-Palmer articles in Canada, that rate regulation does increase costs in the short run, to be a reasonable one. The more difficult question of course is whether that effect exists over the long run and whether it influences rates in the long run.

There are many possible approaches to a system of rate controls. An overriding question is a determination of who should actually control the rate. In Ontario for example should it be the regulatory agency or should it be the Minister? One must then decide whether every rate to be applied by the firm(s) being controlled is to be subject to control. If so, a carrier filing a rate would have to submit with it a justification statement. Alternatively, control could be exercised by "exception" on the regulatory agency's own motion and/or on the filing of a protest against the rate. Further, assume a rate is filed and cause exists to review it. A determination must be made as to whether the decision is to be made by way of public hearing or written justification/protestation. If one can determine the most appropriate course within those parameters, many questions remain with regard to the powers and procedures of the "controller". Given the environment in which the decision is to be reached, it must be decided whether the controller can:

- a) ✓ order the proposer to refile another rate,
- b) ✓ order the proposer to refile another rate and specify the rate to be refiled (i.e. "set" the rate),
- c) ✓ set a rate without refiling,
- d) ✓ set a maximum and minimum rate, or
- e) ✓ set a median rate and allow elevations down and/or up by a fixed percentage.

Prior to the establishment of any system of rate control these fundamental questions must be answered. Legislation and supporting regulations must state precisely who controls the rates, the process by which they control the rates and the powers of the regulatory authority.

## 5.2 Rate Controls - Some Further Problems

In philosophic terms, it may be thought desirable to set rates or prices where it is in the public interest to do so, to ensure that the prices are fair and reasonable. This approach is often taken where the industry being regulated is a public utility. Whether or not one terms trucking a public utility, it is clearly a public necessity that goods be moved; an integral part of the necessity is that they be moved as easily as possible by road.

When virtually all members of society must consume either directly or indirectly a product or a service as a necessity of their well-being, it appears a logical concern of governments that the prices charged be fair and reasonable.

It is once one accepts such a premise that the difficulty begins. The concept is agreeable; the process is difficult.

The issue becomes one of defining what is just, what is reasonable, who shall determine it, and how it shall be determined. An even more thorny problem is to determine to whom must the price be fair and reasonable.

In any market situation, one must view the supplier on the one hand and the consumer on the other. In the truck transportation field, is it appropriate that a rate be just and reasonable from the view of the buyer of the transportation service, from the supplier's view or from the point of the consumers of the goods which are transported?

Put another way, whom is the regulator protecting from unjust or unreasonable rates? The Committee is of the view that the answer must vary depending on the circumstances. This is based on the premise that the three groups or individuals are inextricably linked. Without a positive consumer demand for a product at a particular price, none of the product will be supplied and therefore no transportation will be required. That price must cover the producer's direct and transportation costs. On the other hand, without transportation capability the goods cannot be moved to market, regardless of the demand.

The final price to the consumer is important because it is the demand for goods by consumers which ultimately create transportation demand. The marketplace generally speaking will determine the price at which consumers will demand the product. That price which the market will establish must be sufficient to pay, amongst others, the producer and the one who transports the goods to market.

Considerable research takes an existing or proposed transportation rate as the primary input to the equation and then looks at the effect that rate will have on the carrier, perhaps on the shipper and perhaps on the consumer price.



A belief has grown in many rate regulated jurisdictions that just and reasonable rates relate almost solely to the costs of the carrier. In theory, an evaluation would first be made if a rate is to be regulated on the basis of what effect the rate increase would have on the ultimate demand for, and production level of, the commodity in question. If a carrier's rates are such that a just and reasonable rate for him when added to the other costs of producing the commodity will reduce the demand for it, or the ability of the consumer to pay for it if it is a necessity then, that rate may not be just and reasonable for the society. In such a situation, any governmental body responsible for controlling that rate faces a crucial decision. Is it a responsibility to protect the carrier by allowing a rate that will adversely affect the product's market? Is the economic survival of the carrier in terms of that commodity over that route a public necessity? This problem is particularly acute if the regulatory body believes that the carrier is inefficient with artificially high costs. It is also acute where it might be uneconomical to transport the product by truck -- if a rail carrier could transport the commodity at lower cost, thus maintaining the product price at existing levels, could the regulatory body justify an increase in rate to the truck company.

If a regulatory body is to control rates and have the ability to set rates, then it must be cognizant of the carrier's costs. This is generally the case in other jurisdictions. However, it cannot accept

the carrier's costs in all cases. The body must be in a position to identify inefficiencies in costs presented by carriers. Efficiency could be encouraged and even forced by the regulatory body.

This requires, of course, a knowledge of carrier costs, and cost determination is fraught with dangers.

The Interstate Commerce Commission states:

"(We) have long recognized the existence of a zone of reasonableness within which a carrier is ordinarily free to adjust its charges for itself....the base of the zone, the minimum reasonable level of rates must generally be no lower than the expenses which are determined to vary with the particular traffic...4

Transportation rate regulatory law, both in the United States and to the extent it exists in Canada, does not stop at requiring rates to be fair and reasonable. It becomes more specific, in terms of the manner in which just and reasonable rates are to be determined. The specifics relate almost exclusively to carrier's costs. The term "compensatory" is often used and for conceptual purposes at least can mean a rate sufficiently high to cover variable costs. The Interstate Commerce Commission has stated;

It is highly questionable whether variable costs should be established by statute as the compensatory level for all rates, since if a carrier maintains all of its rates at variable costs, it would not be maintaining a compensatory rate structure. Another serious problem with using variable costs as a statutory ratemaking standard is the considerable difficulty in defining the term. Definitions vary widely. Generally, they all include the out of pocket cost needed to perform a particular service, but beyond that there is a dispute about what these costs actually include and the time frame to be considered in ascertaining these costs.5

Another source states:

Motor carriers are very well aware of their costs and this defines the lower limit of rates. New rates....must as a rule be proven by the carriers to be compensatory (above variable costs). The upper limit of the zone is also well known by motor common carriers because the costs and rates of their competitors both within the same mode and in different modes are known....common carriers have therefore, a very narrow zone of discretion on rates. 6

Whether or not carrier costs are well known by the Interstate Commerce Commission depends on their definition and appears to be the subject of some argument. Whether or not a new regulatory body could effectively determine costs is another question. To gain the expertise would take a significant length of time. Yet, such expertise must be available if rates are to be effectively regulated. It is not enough to accept costs quoted by a carrier and then base decisions so important to the shipper, carrier and the public on the assumption that those costs are true and reflect an appropriate degree of efficiency, given the amount of protection afforded by the Public Commercial Vehicle Licence.

If rates are to be controlled, then the control system should place importance on encouraging productivity gains and in ensuring that those gains are passed on to the consumers of the service. Thus, control determinations of a regulatory agency would include:

1. the level to which the carrier's costs affect the rate,
2. the degree to which there are productivity gains possible which would eliminate the need for price or rate increases,

3. the necessity of the increase to allow the carrier to remain stable and viable,
4. the effect of a change in transportation rate
  - (a) the price of the product being moved, and
  - (b) demand for the transportation service.

### 5.3 The Skeoch Report

This Report, entitled Dynamic Change and Accountability in a Canadian Market Economy - Proposals for a Further Revision of Canadian Competition Policy was prepared by Dr. Lawrence A. Skeoch with Bruce C. McDonald for the Minister of Consumer and Corporate Affairs. It is treated separately because the opinions expressed are directly applicable to the question of government involvement in the pricing process.

Because the report does not address the transportation industry per se, it may be that certain of the concepts would not apply to the trucking industry. This may arise if the costs of the motor carrier firm are structured differently from those in the firm or industry about which a specific opinion is expressed.

Trucking firms are generally said to show a high ratio of variable to fixed costs, to have relatively constant marginal costs and to exhibit no particular economies of scale. Where this is true, it



would invalidate certain conclusions reached through comparisons with product-oriented firms which are capital intensive and which display sloping marginal cost curves and significant economies of scale.

While the cited characteristics of a trucking firm, particularly relating to scale economies, are open to some debate the caveat above should be recognized.

The rest of this section consists of extracts from the noted report:<sup>7</sup>

We can assess briefly the three proposals that are commonly put forward to limit loss-leader selling.

1. The prohibition of sales at less than the buyer's net acquisition cost.

It is not a law prohibiting selling at loss that is desired but a law requiring selling at a price that will provide a "reasonable" profit.

2. The prohibition of sales below some specified minimum markup, varying from six to eight to twelve percent in the retail grocery field.

These statutes, which are not uncommon in the United States, in general do not prohibit sales below the specified cost level unless they are made with intent to injure competitors or deceive purchasers....

In one state, where only one case had been litigated under The Unfair Sales Act, the Court observed in its judgement:

"There are some indications....that the statutes are used by the large sellers against the small sellers to prevent local price-cutting, rather than protecting the small seller against a concerted campaign of underselling by the larger units."

### 3. The prohibition of "cut-throat" pricing.

"Cut-throat" prices - although virtually never defined by those advocating their prohibition - may be meaningfully defined as prices below the longrun real costs of production. This latter concept has an important place in economic analysis: it is ex ante rather than ex post in nature and purpose. It relates to prospective costs which are realized through interaction between prices, sales volume and dynamic change, whether in forms of organization or in technology. The relevance of such analysis for policy has been brilliantly demonstrated by Professor M.A. Adelman in his study of the A & P case. Prices which may be adjudged to be "cut-throat" in relation to past costs (which is what is shown by accounting records) or even current costs, may, in fact, be highly profitable prices in terms of long-run real costs. The "low" current prices may be a basic element in the achievement of a future volume of output or sales that makes possible, and creates an incentive for, changes which, in turn, shift costs to a lower level.

The difficulty in dealing with this type of problem, as Professor J.M. Clark pointed out, is that if trades secure protection against a short-term condition of demoralization resulting from economic change, "they probably tend to over-reach themselves", and in the process, impose undesirable rigidities on the economy. The issue of "cut-throat", or predatory, pricing is examined further in the section dealing with price discrimination.

In sum, price cutting - including a range which would be regarded as loss-leader selling by some individuals and trade associations - is almost invariably an integral element in the process of realizing for society the economies of technological and organizational change and of providing incentives and pressures to continue the processes involved in the transformation of the economy. Concentration on the short-run aspects of price cutting is a result of the real and painful pressures that economic change imposes. The costs of attempting to relieve those pressures by prohibiting price cutting are insignificant only to those who believe that a consequence sufficiently deferred becomes no consequence at all. In reality, the long-run costs of prohibiting price cutting, although not readily identifiable as

specific consequences, will certainly assume damaging proportions. It does not follow that the costs of economic change should be concentrated on those on the shadow side of the market, as has already been argued; enlightened and innovative general economic policies designed to ease the process of change must become a first priority of public policy. In general, it is to such policies that those concerned with "excessive" price cutting should look for assistance in the process of adjusting to change, rather than to the uncertain and socially costly prohibition of the "loss-leader" selling. It is never good policy to deal with symptoms rather than with causes.

#### 4. Cost Justification and Economic Behaviour.

Recent years have seen a widespread tendency by economic interest groups to advocate (or to adopt) a cost justification approach to price determination. In the case of public utility regulation, of course, the practice of basing prices on "cost" plus a "reasonable" profit goes back to the turn of the century. The early confidence in such a formula has long since evaporated; indeed, it has been described by Walter Adams as ranking "among America's least felicitous experiments in economic statecraft". Despite this almost universal appraisal, the calculation of current accounting "costs" as justification for price increases has been resorted to by agricultural marketing schemes, by trade associations, by manufacturing firms possessing high levels of market power, by retailers and wholesalers, and so on through a lengthy list.

Sometimes, as in the case of public utility regulation, the costs employed are those relating to the specific monopolist under scrutiny, in other cases it may be the costs of a group of "representative" agricultural producers, the costs of an "efficient" distributor, the average costs of a group of sellers, a standardized cost formula calculated by a trade association, or costs determined by still some other procedure. In almost all cases, these calculations are claimed to be of a defensive character. If, for example, the domestic or international market provides a price substantially in excess of any remotely realistic "cost" estimate, the claim is advanced that in a market economy a seller is entitled to the going market price - and the associated high profits - but when the market price falls to levels that fail to fulfill the aspirations of the seller he then advances the argument that he is entitled to a price that will cover his "costs and a reasonable profit" - along with the supporting market restraints



needed to realize that price. Or, in a period of inflation, the seller may offer such cost figures as a defensible basis for at least raising his prices equally and simultaneously with those of sellers of other goods. In practice, this tends in a deflationary or in an inflationary period to result in a process of "leap-frog" pricing....

These attitudes - based on comparisons with the most-highly paid groups in the economy or with their counterparts in nearby countries - apply with equal generality to the sale of labour services, to professional fees, to commissions and to other forms of remuneration. Short-run accounting costs, or some proxy for them, become the basis for administering prices of goods and services, and such prices are defended with vigour as being "fair" and "reasonable" and as providing the individual seller, the industry or group concerned with an income equal to that of other groups in society.

Some evidence of the statistical limitations of attempting to derive an industry-wide average from individual firm data is provided by the Committee on Price Determination of the National Bureau of Economic Research:

"Even in areas in which costs are kept the reported costs of identical items may vary amazingly between firms. During the period of the National Recovery Administration evidence presented concerning the paint industry showed that the range of cost variation for identical items was between 500 and 600 percent." Cost Behaviour and Price Policy (New York, 1943), Page 285.

Instances of economies in which the goals of fixed status (or other protected positions) and distributional equality have been placed ahead of the goal of rising levels of national efficiency without a consequential adverse impact on living standards are singularly difficult to discover. On the basis of current analysis and experience it would appear that in both the mid-term and in the long-run the relative strength and prosperity of different industrial and national groups will be determined in an overwhelming degree by the flexibility and adaptability which they display in meeting an ever-widening range of technical and organizational change. To base prices and claims to income on short-run accounting costs (or on a "right" to equal income increases without reference to market realities) whether of an



individual firm or of some "average" or "representative" group, is certain to impede the process of transformation in the economy. This retrograde tendency cannot fail to be powerfully reinforced by schemes to support these cost-price relationships by quotas, limits on entry, restraints on technological change, and other such controls that undermine the market adjustment process.

In addition to these basic reasons for challenging a short-run cost-justification approach, there are other considerations of a narrower and more technical nature that merit comment. In a blanket condemnation of the short-run average cost approach, Professor Malcolm P. McNair, Harvard University, has remarked:

"Actually the doctrine that the only fair prices are those which are based on costs, and that price differentials which cannot be justified in terms of costs are therefore unjustly discriminatory, is bad economics and impossible accounting." Law and Contemporary Problems, Vo. IV, No. 3 Page 337.

He goes on to argue that such an approach essentially denies the economic function of price by leaving the price-making function largely in the hands of the seller, and depriving the demand side of any significant role in the pricing process. This contributes to a failure effectively to explore the potentialities of elasticity in lower strata of demand. Prices based on average accounting costs are also conducive to downward price rigidity, in part because the seller fears that once he reduces his price he will encounter adverse public reaction to any proposed price increase, hence he rarely reduces a "cost justified" increase, and in part because the seller may believe that price inflexibility insulates him from the impact of market forces.

McNair also emphasizes that the manufacturing costs of a particular commodity as determined by accounting procedures do not by any means have the precision of validity, and certainly not the economic significance, that legislators tend to suppose. The arbitrariness inevitable in allocating fixed and joint costs accounts for part of this difficulty of interpretation but perhaps more serious is the problem of sorting out "the numerous and varied interrelations of commodities from a sales standpoint."

Oswald Knauth, in his book, Managerial Enterprise - Its Growth and Methods of Operation, deals further with the role of cost accounting in pricing and other aspects of business policy:

"Cost accounting is a direct offshoot of managerial enterprise...Executive decisions require the particular computation of costs appropriate to the particular situation....The proper formula must be selected in accordance with the practical application of policy and not according to abstract theories. The pulsing necessities of business must be met by definite acts. An estimate of costs is a valuable but slippery tool....

"...The price conditions the organization itself. It is an integral part of the whole. There is no criterion by which a price can be judged right or wrong except the success of the business and the social benefits it brings. And these two may or may not coincide. Another price might have activated an expansion of demand giving the concern an equal or greater profit. There is ample room for argument, tests, and differences of opinion." Pp. 104, 124).

The limited significance of cost calculations in price and policy making is also emphasized by Eli W. Clemens,

"Typically, the determination of average costs (or standard costs plus a margin for overhead and profit) is a function of the cost accountant in the lower echelons of management. Cost analyses, however, represent only the basic data from which price and production strategy is plotted in light of other factors by top flight management. In different terms, average costs are significant to those in the management hierarchy who follow policy, but not necessarily to those who make it. To top management some circumstances might dictate pricing or the addition of a product to only a little above what the cost accountant's statement indicates to be marginal costs. Other circumstances might lead management to reject suggested additions to the product line that cover average costs several times over. To some extent the solution of the problem...turns on the period assumed for analysis. The longer the period for which strategy must be plotted, the greater becomes the percentage of total costs which must be characterized as marginal.

"... Normal profits, necessary to a firm's long-run existence, are obtained only in so far as average revenues under multiple - product production are equal to average costs. This condition can only be attained by the continuous process of invasion and cross-invasion of markets, by shuffling and re-shuffling of prices and markets, which are so characteristic of economic activity." The Review of Economic Studies, Vol. XIX (1), No. 48, pp. 8 - 9.

Statements of unit "cost of production" as a basis for prices have been characterized as representing nothing more than an expression of the aspirations of the producer (seller). In the sense that the producer laid out his expenditures in the hope and anticipation of earning a return on them, this statement is largely true. This reasoning applies as much to an investment in education as to an investment in bricks, mortar and machines. However, such investments are inevitably more or less speculative in nature, although each investor understandably hopes that his product will be scarce and in strong demand thus pushing the price far above the highest conceivable cost. If it turns out that the product is plentiful or if an effective substitute for it becomes available from a foreign or domestic source the price may be driven down below the "cost" of the most efficient producer.

As Howard Clark Greer has succinctly summarized the process:

"In a free economy no seller is 'entitled' to a price which will cover his costs. He is entitled only to the price the market affords. He must learn to live on the price or quit. He cannot burden the buyer with excess costs: he must absorb them himself....

"On the other hand, wide profit margins are eagerly accepted, actively exploited." Howard Clark Greer, "Cost Factors in Price-Making", Harvard Business Review (July-August, 1952,) page 45.

Despite the fact that there is no virtue in low or "reasonable" profits, per se, and there may be great virtue in high profits earned in an open competitive field, there has been an almost universal attempt among Canadian sellers of goods and services to promote the notion that all they want is a "fair" and "reasonable" price, fee, salary, or profit. Few, if any, are prepared to admit that they are seeking or are willing to accept the return they can earn in a competitive market, be that return extravagant or negative - even if they would have the full weight of dynamic economic theory behind them in such a posture. Cf., the following comment by David McCord Wright: "From the point of view of dynamic economic theory, the 100 percent profit of a new and rapidly expanding firm, in a risky field, may be more justified than the 5 percent profit of the stationary legal mono-



poly which is merely operating in a fixed groove." (Capitalism (New York, 1951), Page, 167).

Although written in a different context, the following statement by Greer sums up the essential rationale of this "fairness" approach:

"Among the most popular of the notions about fairness in pricing is the idea that a seller is 'entitled' to a price which will cover his cost, plus a 'reasonable' profit. Few propositions gain readier acceptance, particularly among persons supposedly sophisticated in business matters. It seems reasonable that a fair price should reflect the cost of production, that no one should be required to do business at a loss, that everyone should receive suitable compensation for his efforts. Greer, op cit. At the time of writing this article, Greer was Vice-President of the Chicago, Indianapolis and Louisville Railway, and had been President of the American Accounting Association.

Another possible use of a short-run cost justification calculation - perverse though it may be for economic policy - is that it may provide an essential element in presenting a rationalization for a policy or a decision. The Committee on Price Determination has referred to this consideration as follows:

"It may be necessary, for example, for a business organization to justify an action before the courts, an arbitration board, or certain other concerns. This function of costs has developed particularly since the N.R.A., the growth of Fair-Trade Practice laws, and The Robinson-Patman Act. Costs have a precise and final appeal to legislators and the public, to whom the ambiguities and shades of possible meaning are not always apparent. Hence an appeal to costs (a supposedly unprejudiced piece of evidence) may frequently serve the useful purpose of justifying a policy or action. Cost Behaviour and Price Policy, Page 27.

In Canada the notion that the Public interest would be well served by arrangements among sellers which assured "stability" and "fairness" of prices arises from the experience of war-time controls. The overall success of that undertaking - although there were some



notable mishaps - produced among a number of its administrators a degree of zeal to pursue the objectives and practices of that agency in the private sector in peacetime that today is difficult to comprehend.

It should not be necessary again to explore the inadequacies of this short-run cost approach to price policy, although the combines authorities can testify to its persistence. For more than a decade they were obliged to devote much of their effort to the elimination over a wide range of industries of the belief that arrangements designed to fix "reasonable" prices and profits were not only legal under the combines legislation but also represented desirable economic policy in a wider sense. In fact, on this latter issue the debate still continues on a scattered front, perhaps as much within the public sector as in the private sector.

It is not of course, the purpose of these comments to call into question the conceptual validity or the impressive short-run achievements of the war-time price controls. Desperate problems demand desperate remedies. However, it is vital to be aware that such remedies often have carry-over effects which persist long after the problems they were designed to meet have disappeared. Apart from the vested interests which these remedies bring into being, the creation of an alternative conceptual framework and an institutional structure for decision-making in the economy, if permitted to become embedded in public policy, is almost certain to present formidable obstacles for the regeneration of a market-directed, private enterprise system. Agricultural marketing policy and public utility regulation are already near the point of no return. Other governmental agencies which assess economic performance in terms of cost justification criteria - of which we have currently a number of extreme examples, some of which enjoy considerable public support - are contributing to the steady erosion of the market - oriented sector. To prevent further erosion, and, if possible, to reverse the trend, is a redoubtable task for the combines administration.

Finally, and by way of digression, we refer to a proposal, that has received some attention in the United States, (Phillip Areeda and Donald F. Turner, "Predatory Pricing and Related Practices Under Section 2 of The Sherman Act", Harvard Law Review, Vol. 88, Page 697 - 733.)

which involves the use of a cost-justification approach to the assessment of predatory pricing situations. The substance of the Areeda-Turner proposal is that if a monopolist's pricing in a market in which he has "monopoly power" results in a "price below reasonably anticipated average variable cost" (it) "should be conclusively presumed unlawful". The discussion in the article makes it clear that the cost concept employed is short-run in nature.

On the surface, this is an attractive route out of the morass that so frequently surrounds cases of predatory pricing. For a number of reasons we find the proposal undesirable and probably unworkable. First, because of its short-run basis, the price concept is based on current accounting data, and it is, therefore, static and retrospective in effect. As we have argued elsewhere in this report, we prefer the long-run marginal or long-run average cost approach because of its fundamental anticipatory bias, thus making it possible to make allowance for planned changes in scale, in technology, or in organizational methods. This consideration we regard as decisive in rejecting the Areeda-Turner proposal. Cf., The following statement by the Committee on Price Determination:

"A decision with respect to price structures applies to a future period; the costs significant to this price decision are not those which prevailed in the past...Nor are costs based upon engineering or technological standards decisive for pricing. The significant costs, rather, are those which may be expected to prevail in the period for which prices are being considered. In the preparation of costs for pricing decisions, standard costs or those of the past period may be taken as a starting point and modified in view of probable changes in factor prices, technical efficiencies, and conditions of operation." (Cost Behaviour and Price Policy. P. 27.)

Cf., also Rowley's comment on the change in the pricing system employed by the British Iron and Steel Board:

"The Board decided that its pricing system should be designed to encourage capital development in the steel industry. To this end, prices should take account of the operating and capital costs of hypothetical new plants, incorporating the most modern new techniques and operating at a high level of efficiency." (C.K. Rowley, The British Monopolies Commission, London 1966, Page 301.)

Second, Areeda and Turner state that the relevant cost concept for their analysis would be marginal cost, but "recognizing that marginal cost data are typically unavailable", adopt the average variable cost measure as the closest available substitute. The difficulty with this decision is that it is based on cost measures as set out in economic texts; in fact, marginal cost as employed in business decision-making is something different from the formal definition, and this makes the substitution of the average variable cost measure for marginal cost as the "test" of predatory pricing open to serious question.

Some of the differences between the "real" and the text-book concepts of marginal cost are well set out in the following statement by Clemens:

"Marginal cost is something more than its ascertainable and measureable elements. Risk and the additional cost of management, both of which are substantial, are marginal costs. Conceivably marginal cost must include a certain minimum amount which the businessman considers necessary profit. When he says that the profit on a certain additional piece of business is "not worth his time and trouble", he is giving expression to a very real concept of marginal cost. The writer also agrees with Professor Machlup's position that too rigid a definition of marginal cost would trap its users into unrealistic and untenable positions." (Clemens, op. cit., Page 8.)

Third, since average variable cost as a percentage of total cost can vary greatly depending on the extent of capital intensity characterizing the different industries, different tests of predation would be employed. In industries where average variable costs constitute a very small proportion of total costs, only a major price cut would push the monopolist into unlawful behaviour. It cannot be assumed that the destruction of capital values involved before that point was reached would be a matter of indifference for public policy. On the high proportion of total costs - as, say, in meat packing - only a slight price reduction would trigger a conviction for predatory pricing. The price rigidity that such a result might well engender would not necessarily be in the public interest.



Concluding Comment

On the whole, we conclude that a short-run cost justification approach to price determination, whether adopted by private groups independently or with the sanction of public authority, is inimical to the operation of a market system and, in a broader sense, is inconsistent with the operation of a dynamic, flexible economy. Not only does it lend support to established cost-price relationships but it tends to pass on in pre-ordained fashion any cost increases instead of having the shifting stresses of the market bring pressure to bear to modify such increases. The short-run cost-justification approach weakens the forces working for the introduction of new technology and new forms of business organization; it weakens the role of prices and profit in allocating resources and places the emphasis on direct intervention to shift resources. By insulating substantial sectors of the economy from market pressures, it concentrates the burden of adjustment arising from economic change - and change does still go on in some sectors of the economy and in some areas of the world - on the remaining shrinking area of the economy occupied by the market-oriented industries.

The concept of the short and long-run, in the explanation of prices, is a functional one and cannot be defined in calendar time, for it differs from industry to industry. It all depends on the speed with which equipment and labour in the particular case can respond to changing levels of output.

In an industry in which the equipment is of a simple and not very durable character and the labour relatively unskilled, adaptation can take place quickly. Here the "long-run" may be only a matter of a few months.

In industries which require a great deal of complex and durable equipment and which employ highly skilled labour, it may take years, or even decades, for the long-run forces to work out their effects.

The reasonably anticipated long-run cost of production (and distribution) cannot be derived from current accounting records. It is prospective rather than retrospective in thrust and relates to those economies that can reasonably be anticipated from larger-scale operations, from the introduction of planned changes in technology, organization of the operations of the firm, and the like. It is not speculative in the irresponsible sense but is based on today's best plan, not today's best practice which is based on yesterday's best plan. Price reductions can be made in anticipation of the introduction of such "best plan"; indeed, price reductions may be essential to achieving a volume of sales needed to implement the new technology or the new system of organization.



In matters of public policy one cannot afford not to be effective, and mechanical codes of legal rules regulating market economies are as inadequate as mechanical models of economic behaviour, structure or performance.

#### 5.4 A Proposal

In principle, there are several reasons to consider a program to review rates. An appropriate scheme of review would require the government to greatly increase its knowledge of rate levels and rate bases. It would require government to look at discrepancies in rates, to compare rates across different modes, to assess the degree to which the regulatory system imposes costs on carriers and to establish more effective regulatory policy to allow, promote, encourage or require carriers to be as efficient as possible.

If entry to the trucking industry and its operations are to be controlled, then government must recognize the fact that the regulatory system can affect rates. If the rate levels allowed or produced by that system are too high or unduly discriminatory then the whole effort is meaningless, assuming service levels have not been increased to the benefit of the public.

The arguments for entry and operational regulations are broadly based and include social considerations of good management - labour relations, improved concern for safety and good levels of service to

the shipping public. Many of the goals of a regulatory system are economic however - stability, promotion of efficiency and whether or not such goals are met depends to a significant degree on the rates being charged. The level of rates, in conjunction with costs and volumes determine the carrier's profits and plays a part in the formulation of product costs to be recovered by manufacturers. Transportation capability must remain viable or the production process will suffer. If the government seeks such viability in both an economic and social context through a regulatory system, it must be concerned about and be able to influence the level of rates which the system produces.

The Ontario Highway Transport Board is the appropriate body to administer the program recommended.

It is the Board which must be given the necessary expertise which must be uniformly and quickly applied if the system is to work properly. It must operate within specific guidelines laid down by the government yet be flexible enough to adapt and react to new, unique or emergency situations.

The system cannot be cumbersome. Justification statements should not generally be required. A rate should be subject to review and justification only if specifically protested. If a rate review application is received, the Board should determine whether or not a public hearing of that application is justified and proceed accordingly. If the Board does not proceed by public hearing, it must make known to the parties and to the general public its reasons and decisions.

The basis of cost structures and cost estimates will become an integral part of a hearing. A company's entire operation from a cost and efficiency point of view will no longer be confidential; it will be subject to public and governmental scrutiny.

The Board must not give any indication to carriers that justification statements when required should be the products of either tariff bureaux or other professionals. While such technical advice might well be required in some cases, it is the carrier's right to decide. Where a carrier decides to proceed alone the Board should counsel him with regard to the information most likely to be required in a justification hearing. The Board should develop forms and guidelines so that the grounds on which rate appeals will be made are known to the carrier. The Board should also inform those involved of likely costs in the proceeding.

The same must be true for the shipping public. The Board must be neutral and provide assistance to the proposer and appellant equally.

One of the real problems of a rate appeal system is regulatory lag. Rate control might well have worse effects. Indeed, some have complained that even the thirty day requirement for filed rates to become effective is at times burdensome. A rate review program cannot help but add to the problem. The Board must be equipped to process review applications swiftly and the Committee foresees, as previously indicated, a more structured operation at the Board. A small, efficient,

highly skilled office will be needed within the Board to advise carriers, shippers, the public and members of the Board on rate proposals and reviews. This will take time and, as a result, the review system cannot be totally implemented at once. The required process must evolve as expertise is developed within the industry and the Board.

Acceptance of this principle has implications in terms of the powers which should at the outset be given to the Board. As indicated previously, the Interstate Commerce Commission has the discretionary authority to suspend a rate proposal which has been protested pending final disposition. While such discretionary authority may ultimately speed up the process in Ontario, it is not appropriate during the initial stages of the program to leave it to the discretion of the Board. A rate must be suspended when a review is applied for and that suspension should be a matter of statute. The filing - appeal - disposition process must be efficient.

The impact of the recommended process will be rough justice for the parties involved. The concept, simply stated, is that carriers will be required to justify a rate proposal in a review proceeding. If the proposed rate is not justified, it will be disallowed.

The Committee expects that this will lead to proposals which are justifiable to the Board, to shippers and to the public generally. If the process works, there will be better communication between



shippers and carriers. As this happens, and as proposals are rationalized, the need for and frequency of reviews should diminish.

In the meantime, carriers must be aware of the real likelihood of severe tests of rate proposals. In the process, the carrier will be the one who chooses the terms of reference for an appeal, for it is he who must justify the rate and determine the grounds on which this can best be done.

Those who choose to apply for a rate review cannot do so frivolously. Costs should be assessed against them in such cases. A basic principle of the recommendations is that a contest should be between equal parties. The Board must attempt to observe this principle in all hearings but particularly in rate review hearings, the implications of which are so significant for the parties to the action.

The Skeoch Report referred to at length in the previous section was written with a view towards competition policy in Canada. If rate review were contemplated to protect the truckers, then the philosophy of the report would have no direct relevance to this discussion. If rate review were contemplated to protect some other group, and this is the case with the Committee's proposal, the Skeoch Report is directly relevant. The major question of course is to protect whom from what? It is inescapable that the "from what" must be from rates which show characteristics, real or imagined, of rates set by colluding carriers, or, from a monopolistic or oligolistic market position.

The Committee has argued that Ontario's trucking industry is competitive in most given situations, even though in the aggregate the industry may be (we stress may be ) fairly highly concentrated. It may seem that this view is inconsistent with the above rationale for considering a rate review program.

The Committee however feels that control or influence over rate levels is consistent with the principle of entry and operational regulation.

The system of entry control should provide where appropriate, effective competition. Effective competition implies supplying the quality and type of service demanded.

The price offerings of truckers in any given situation will reflect the nature of the market place, in the given situation and across its entire operation. The prices reflect the carrier's interpretation of that market. The major question if government is to regulate the supply of truck transportation services, is whether the carrier's interpretation and the resultant price offerings are

conducive to the achievement of public policy objections. While the price and service will in the Committee's view most often be conducive, they will not always be. If the injection and manipulation of competition in supply does not produce the desired results in terms of prices the government should have the ability to act directly.

While competition exists and is controlled generally, the Committee recognizes the realities of rate-making today. If Tariff Bureaux are to continue to operate they should be recognized (chapter 4 of this Part). If they are to be recognized, it is appropriate to have ultimate control over the product they produce. Entry control obviously affects the market place; that is its purpose. Enlightened application of entry controls will produce and allow two or more carriers to be available to virtually all shippers in the province. Whether they compete or not is another question. This depends on whether collusion occurs between carriers over specific routes. Any collusion as to prices or market sharing would likely offend anti-combines law.

A strict rate control system where the government could set rates is not appropriate. Any such system would result in negotiations occurring before the Regulatory body in rate cases. It would result in carrier's filing higher rates than necessary, then settling for lower rates through negotiation hearings. The final rate in such cases might still be higher than the situation would actually warrant.

The "all or nothing" approach recommended by the Committee will have a mitigating effect on any tendency of any carrier to file high rates, either across his entire operation or for specific routes, lanes or commodities. The higher the filed rate the more likely it

will be to attract attention . The Committee reasons that this will cause most carriers to look very seriously at their cost structure and over all pricing policy. If this occurs, as it must in such a system, rates produced will be rational, and the public's interest will normally be well served..

The Committee cannot sanction collective rate making per se, but on the other hand, the government has inserted itself into the market place for truck transportation. If discussion occurs between carriers of costs and pricing techniques in an industry where entry and many operations are controlled, and if such discussions serve to produce rational rate levels, acceptable to and understood by shippers, carriers and government, then the process may be considered to be in the public interest.

The final determination of whether it is in particular situations, should be the government's given the nature of the trucking industries today.



5.5 Recommendations

The Committee recommends that The Public Commercial Vehicles Act be amended to give effect to the following, subject to other recommendations in this Part:

1. Any rate or tariff of rates filed pursuant to the provisions of section 12 of The Public Commercial Vehicles Act is subject to public review.
2. Any person or organization the majority of whose members would be directly affected by a proposed rate change filed independently by a single carrier may apply to the Board to have the rate proposal reviewed.
3. Any person or organization whose members would be affected by a proposed rate change filed on behalf of any number of carriers by a tariff bureau may apply to have the rate proposal reviewed.
4. An application for a rate review must be submitted in writing to the Board within 15 days of the publication of the notice of the filing by the Board, which must be done within 16 days of the filing of the rate.
5. In addition to publication in the Ontario Gazette, the Board develop a mailing list for subscribing parties to inform them of all filings.
6. Tariff bureaux and carriers take reasonable steps to inform those shippers affected by a filed rate of all rate proposals.
7. The Board may defer a review until it is established that to the Board's satisfaction the proposer and appellant have discussed the proposed rate and that no agreement can be reached.
8. The Board may appoint a person to participate in such discussion and/or bring the parties together for the purpose of discussion as described in 7 above.
9. When a review is allowed, the filed rate(s) under question not become effective until a hearing is held and/or an order given by the Board.
10. A hearing must be held as soon as possible and within 15 days of the expiry of the review application period. A decision must be handed down within 10 days of the hearing. If either time is not honoured, the rate shall be deemed to come into effect, and the Board may not thereafter refuse the rate.
11. A review application must be accompanied by an appropriate filing fee to discourage frivolous actions; costs of the proceedings will be assessed by the Board accordingly.
12. The Board may discontinue a review at any time on its own motion, provided the reasons therefor and any decision which results are made available to the parties and the public.

13. The Board in its decision may only reject or allow the tariff or rate(s) as filed.
14. The Board may encourage the carrier in some cases in conjunction with a shipper to investigate ways and means to lower costs where such action would result in no contest and/or lower rates.
15. There be no appeal from a decision of the Board either approving or rejecting a rate or tariff of rates.
16. At any time the Board discontinues a hearing or approves or rejects a reviewed rate, whether by public hearing or not, the Board make its decisions, with reasons therefor, available to the parties and the public.
17. When the Board rejects a rate or tariff of tolls after a review, the proponent of the rate or tariff may not file any rate increases for 90 days from the filing of the first application for review.
18. The Board be directed by legislation to approve those rates which are in the public interest.
19. The Board be directed subject to the recommendations in Part II, Chapter 3, by the Minister to consider those facts and criteria that government policy suggest, which may include:
  - (a) the long run fixed and variable costs of the carrier.
  - (b) whether the costs quoted and projected by the carrier are justified and reasonable,
  - (c) the economic consequence of the rate change, including whether the increased rate is required if the carrier is to remain viable and whether the rate is discriminatory, and
  - (d) the historical and projected rates of return of the proponent carrier(s).
20. The Board should through its decisions attempt to ensure:
  - (a) that rates reflect longrun costs.
  - (b) that costs are justified and reasonable,

- (c) that rate changes reflect a mileage taper where it exists with regard to costs,
  - (d) that tariffs and rates are in a comprehensible form and as simplified as possible in their structure, and
  - (e) that "through" and "joint" rates are published where required by the public interest.
21. Any rate filed and not reviewed by the Board be deemed to be approved by the Board.
  22. This program be phased into operation coincident with the Board acquiring suitable expertise to exercise this proposed mandate consistently within the given time limits.
  23. As the program is phased in, the Ministry of Transportation and Communications in conjunction with the Board and industry, consider the role of freight audit service firms.

## PART IV - CHAPTER 5

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2. Ibid.
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4. Ibid, Page 145.
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7. Skeoch, Dr. L.A. with McDonald, B.A., Dynamic Change and Accountability in a Canadian Market Economy, A report to the Federal Minister of Consumer and Corporate Affairs, March 31, 1976, Extracts from Pages 256 to end of the Report, many are non-sequential.



**PART V**  
**Transportation**  
**Objectives**



## CHAPTER 1

### ENERGY

#### 1.1 Background

The Committee stated in Chapter 4 of the Interim Report that energy and energy efficiency have become, and in the Committee's view will remain, a critical consideration in the derivation of public objectives and policy towards the transportation industry. Of importance is not only the energy consumed by transport in the aggregate, but the energy consumed in particular movements.

#### 1.2 Since the Interim Report

The Committee stated in the Interim Report:

We will be requesting the Ministry of Transportation and Communications to conduct a survey, in conjunction with the industry to provide more significant data on the following matters:

1. Miles travelled full, partially loaded, bobtailing, and empty, by class of licence.
2. When empty, the size of community being served; when partially loaded, the size of community being served; and the commodity being hauled in and out.
3. Licences which restrict return loads.
4. Analysis of regional trade imbalances.
5. Reason for empty equipment: nature of the vehicles; shipper preference; load incompatibility; cost of arranging, e.g. waiting time; no freight.

In response to the Committee's request, the Ontario Trucking Association has conducted a survey of some member carriers. The results are discussed in Section 1.5 following. The Committee acknowledges the cooperation and initiative of the Association and its membership in reacting so quickly. The information presented to the Committee is useful for the purposes of this Report, but more importantly, it forms a basis from which to examine the question in detail.

The Ministry of Transportation and Communications has agreed to initiate a study to measure the extent of empty movements and the reasons therefor. It is necessary that such a study be done to be certain that future proposals of government will be founded on solid facts. The complexities of this subject are great and the involvement of the licensing process in it is not well defined. The Committee acknowledges the response of the Ministry and hopes that the study results will provide the required foundation for future decision-making.

The Committee requested a discussion with the Ministry of Energy which has responsibility for Ontario's energy policy. It manages some programs, but others are delegated to individual ministries. For example, the Ministry of Transportation and Communications is to conduct research into energy management programs within the transportation industry. The testimony of the Ministry of Energy was therefore general, rather than related to specific matters such as empty truck movements.



### 1.3 Energy and Transportation

#### 1.3.1 Supply and Demand for Fuel

The following figures indicate respectively:

1. A comparison of per capita energy consumption between selected countries.
2. Ontario primary energy consumption by source in 1974.
3. Canadian crude oil and N.G.L. (natural gas liquid) demand shown as compared to possible production levels projected to 1990.
4. A forecast of the Canadian automobile size "mix".
5. Ontario net sales of petroleum products, 1975.
6. 1974 Canadian demand for energy.<sup>1</sup>

#### 1.3.2 Demand by Transportation

The Interim Report, quoting a Ministry of Transportation and Communications study, stated:

The transportation sector consumes 17 percent of the national energy supply and 38 percent of petroleum products. In Ontario, transportation accounts for approximately 50 percent of the petroleum consumption, and trucking accounts for 30 percent of the transportation consumption.

Last year in Ontario there were approximately a half million trucks consuming close to a billion gallons of gasoline and diesel fuel oil. The proportion of gasoline to diesel fuel oil is 80 percent and 20 percent respectively. In addition, several million gallons of lubricating oil were consumed.<sup>2</sup>

In 1974, the Energy Research Group of Carleton University prepared a report entitled "Energy Consumption for Transportation in Canada". The report, prepared for the federal Department of Energy, Mines and Resources included projections for energy consumption based on projected traffic and its energy intensity.

FIGURE 1

## PER CAPITA ENERGY CONSUMPTION

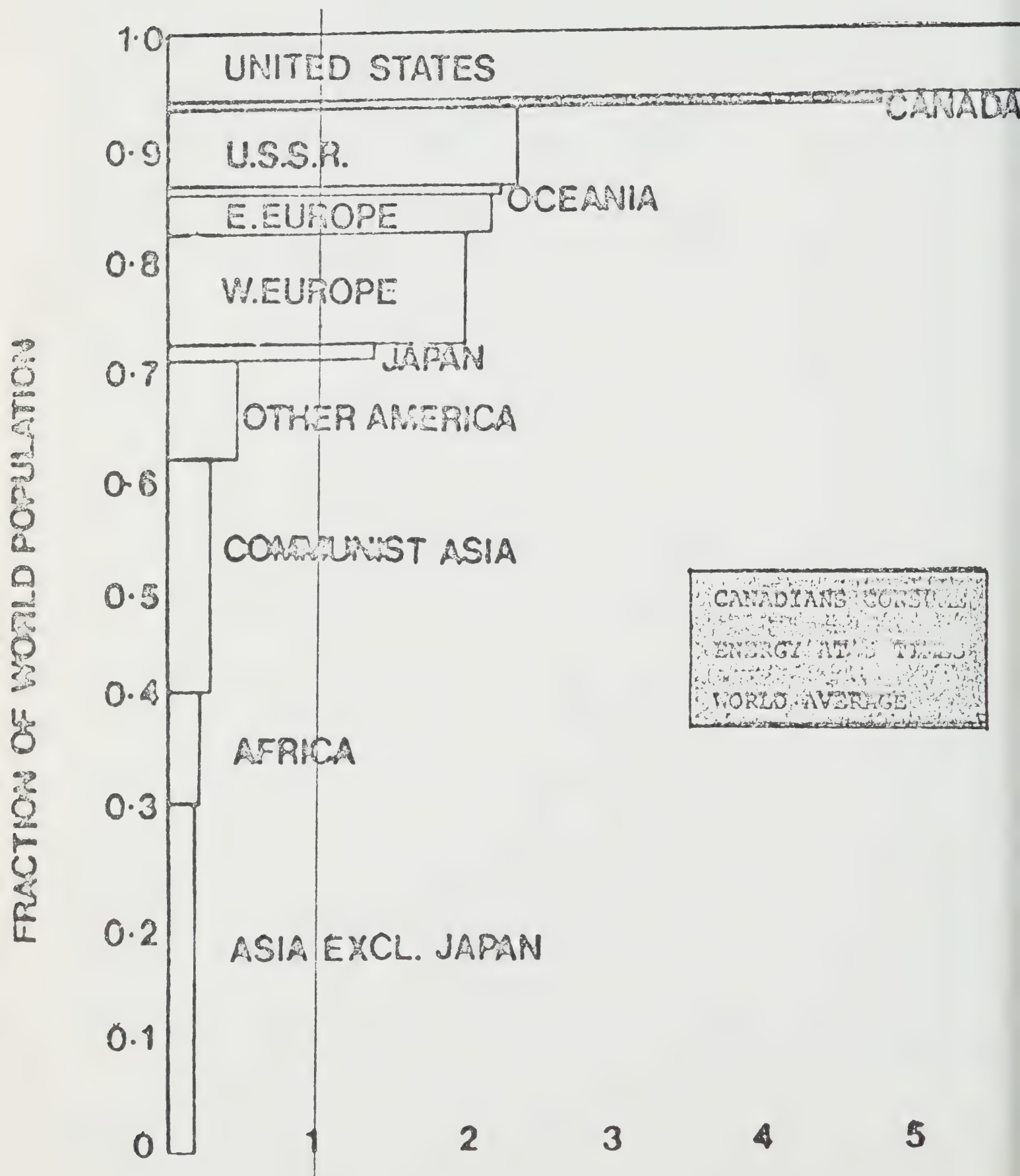


FIGURE 2

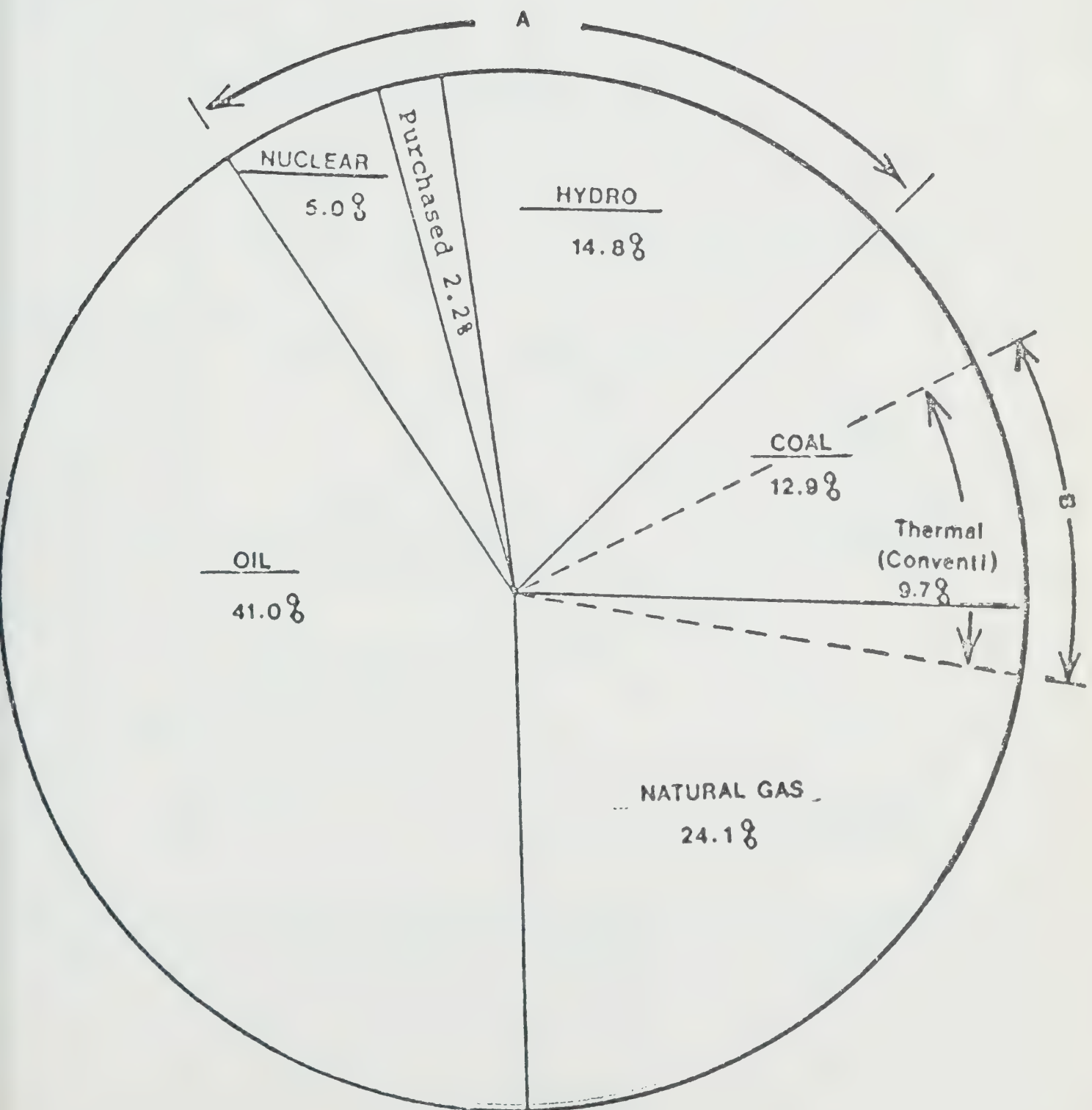
ONTARIO PRIMARY ENERGY CONSUMPTION BY SOURCEAS PER CENT OF TOTAL CONSUMPTIONYEAR 1974

FIGURE 3

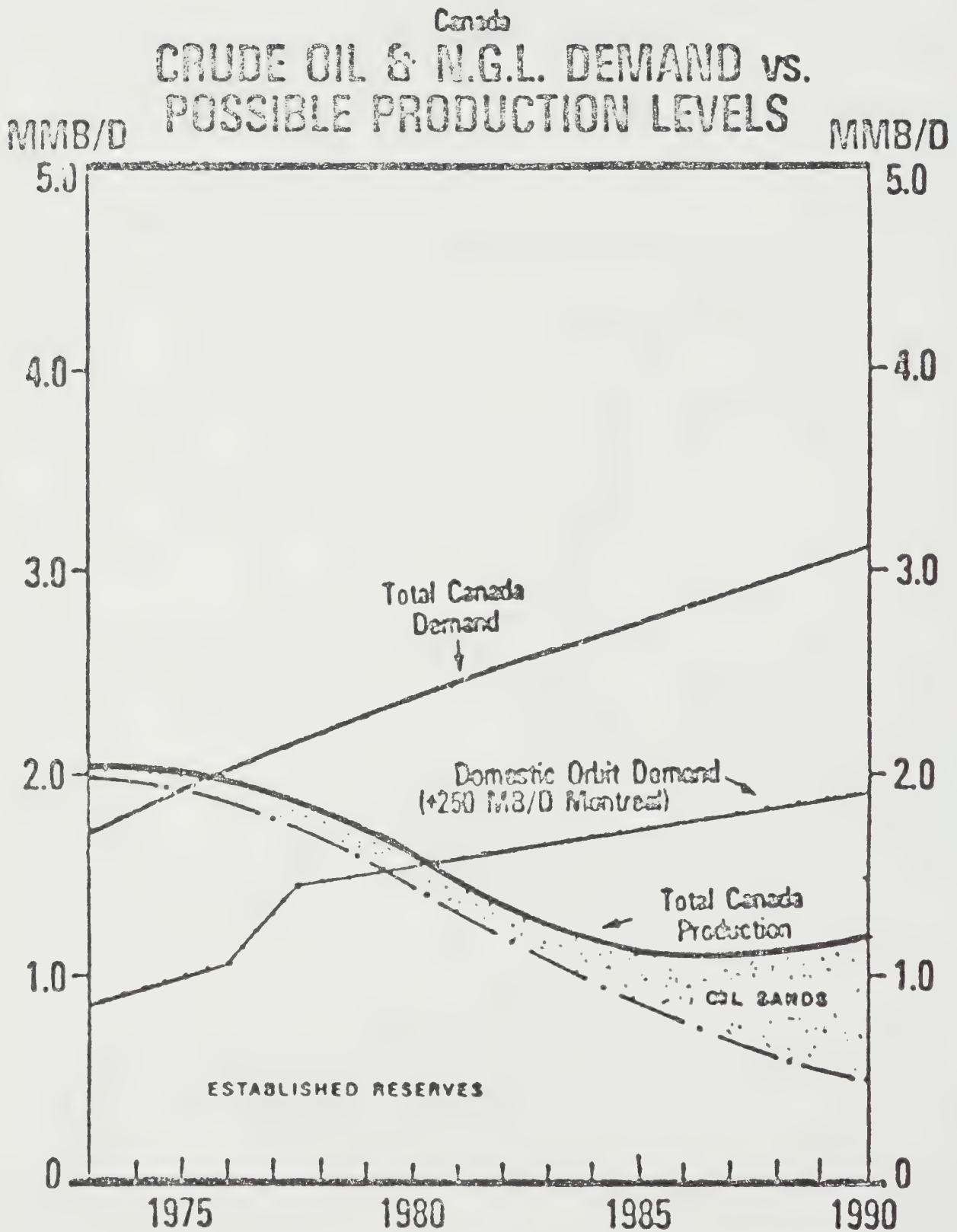
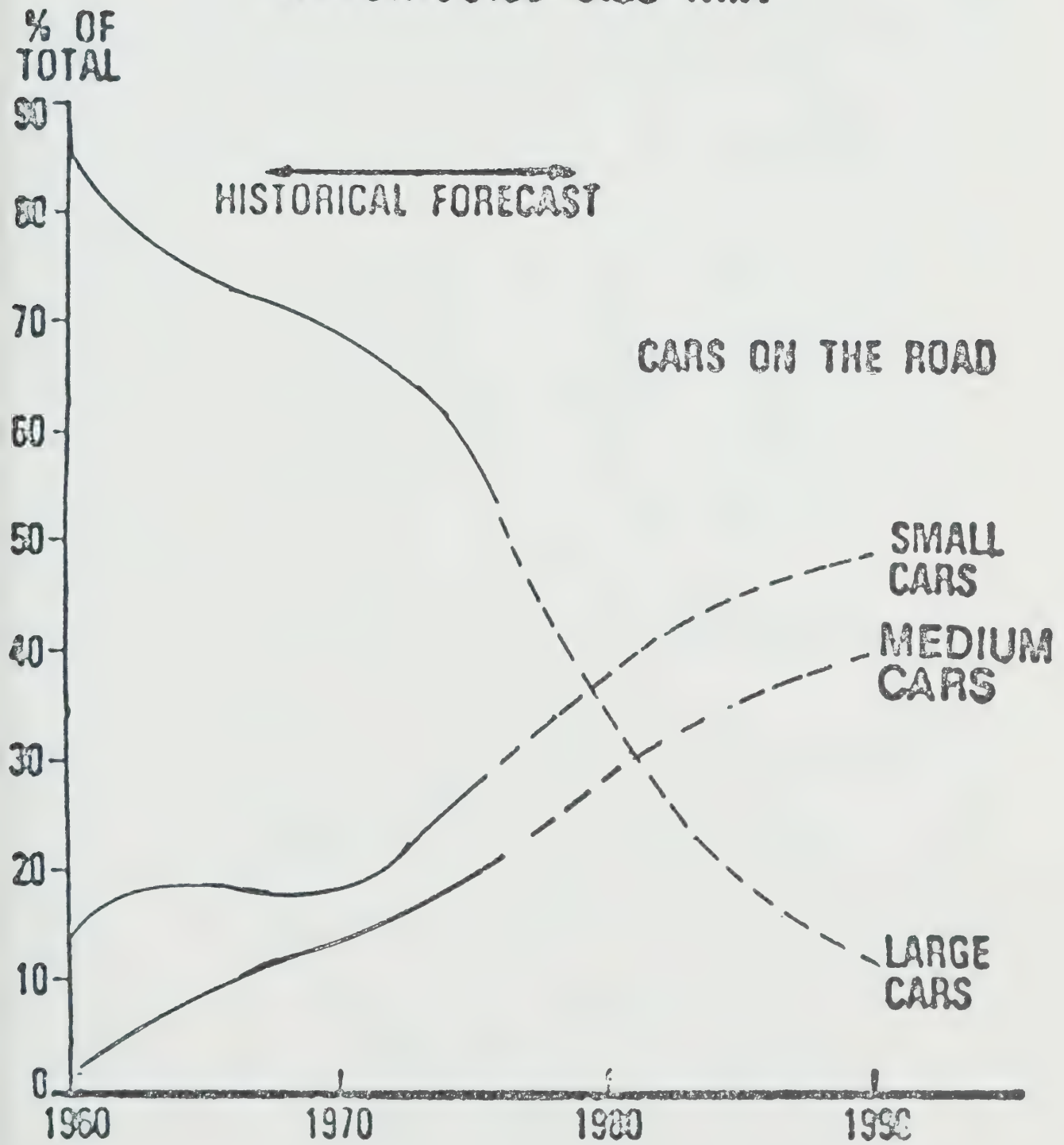




FIGURE 4

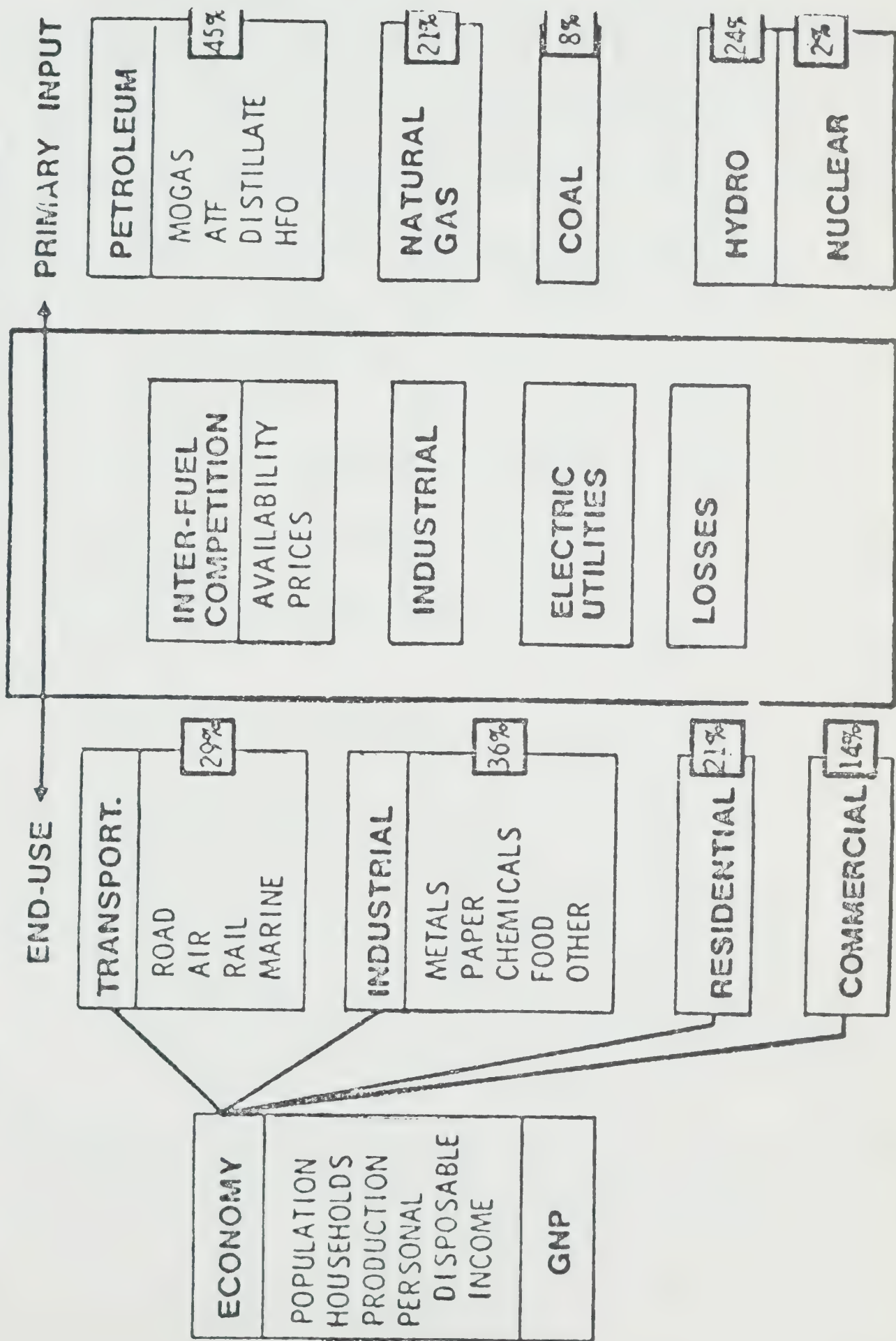
# CANADA AUTOMOBILE SIZE MIX



<u>ONTARIO</u>	
<u>NET SALES OF PETROLEUM PRODUCTS</u>	
<u>1975</u>	
	<u>%</u>
GASOLINES	
MOTOR	42.8
AVIATION	2.8
 DISTILLATES	
KEROSENE	1.3
AVIATION - KEROSENE	1.3
DIESEL FUEL	8.8
LIGHT FUEL OIL	19.3
 HEAVY FUEL OIL	12.2
 OTHER PRODUCTS	11.5
	<hr/>
TOTAL	100.0%

FIGURE 6

# 1974 CANADIAN DEMAND FOR ENERGY



Some features of their projections were:

- . total energy demand will increase four-fold between 1970 and 2000;
- . both intercity and urban automobile energy requirements will double by 1990;
- . intercity air passenger traffic will grow rapidly, and by 1990 will demand six times the energy used in 1970;
- . in freight transportation both truck and pipeline (gas) will experience a four-fold increase in the use of energy between 1970 and 1990;
- . by 1990 air-cargo will demand six times the energy used in 1970, but the share of the overall energy requirements will remain small;

Note that seat occupancy and freight load factors as well as the energy intensity for each mode are held constant at 1970 levels.

The energy projections for this study and that of EMR are listed in Table (1). While the figures for most transportation pathways are similar, the values for roadway movements are significantly different. The exact methodology used by Statistics Canada and EMR is not known. Hopefully, as this is only a preliminary study the differences will be resolved.

Naturally the energy consumed in the transportation sector as in every other sector will increase as the population grows. In addition, the demand for transportation by each person is expected to increase (see Table 2). Neither of these factors accounts for a rising energy intensity or energy cost per unit of transportation for the Canadian system as a whole suggested by the figures of Table (2). It is the result of a projected shift to the use of more intensive modes, e.g. aircraft. Currently, in Canada approximately 10% less energy is consumed for a unit of transportation than in the U.S. This is partly due to a greater use of rail and a lesser use of the high intensity modes - truck and aircraft. Note again, that the energy intensity of each mode has been held constant for these projections which is probably not very realistic when one considers, for example, the recent diminishing fuel economy (mpg) for cars.

Table (3) shows that in Canada and the U.S. the automobile consumes the largest share of oil used for transportation. Obviously the automobile, which accounts for more than 50% of the petroleum is a good mode to consider changing.



TABLE 1

ENERGY CONSUMPTION PROJECTIONS FOR PATHWAYS  
(Trillion BTU)

		1980	1990	2000
EMR, 1973	Road	1,570	2,144	2,865
	Rail	100	141	199
	Air	280	610	1,150
	Marine	140	191	257
	TOTAL	2,090	3,086	4,471
This Study	Road	1,210	1,649	2,106
	Rail	105	152	238
	Air	303	661	1,465
	Marine	73	114	191
	TOTAL	1,691	2,576	4,000

Source E.R.G. - Carleton

TABLE 2

SYSTEM-WIDE ENERGY INTENSITIES					
	1970		1980	1990	2000
	U.S.*	Canada			
BTU per domestic passenger-mile	5460	5000	5160	5470	5780
BTU per ton-mile	1100	1020	1040	1100	1120
Passenger-miles per capita			8790	9940	11180
Freight ton-miles per capita			20680	23740	41010

\*First, 1973

Source E.R.G. - Carleton University

ENERGY\* CONSUMPTION BY TRANSPORTATION MODE (1970) (percent)

System:	Canada	U.S.	U.S.	U.S.
Reference:	1	2	3	4
Auto	Intercity	21.7+		
	Urban	37.1	26.4	
	Total	58.8	57.1	47.0
Bus	Intercity	0.3	0.2	
	Urban	(see Transit)	0.6	
	Total			
Urban Transit		0.8	0.8	1.0
		0.8	(see Urban bus and rail)	
Rail	Intercity	6.7	3.5	
	Urban	(see Transit)	0.1	
	Total			
Truck	Intercity	5.0	3.6	4.0
	Urban	7.6	7.0	
	Total		14.9	
Air	Intercity	12.6	21.1	23.9
	International	6.0		
	Total			
Water		12.8	11.4	14.0
		5.3	1.4	6.0
Pipe		2.5	12.	

\* Note that the columns don't all add to 100% because of missing figures, round-off errors and the category "other" not being included.  
+ Mostly oil: gas pipelines not included.  
1) Carleton; 2) Hirst, 1973; 3) Goss W. and McGowan J., Transportation, VI, N3, Nov. 72  
4) Anon, Associated Universities Incorp., Rep. AET-8, April 72.

1.3.3 Demand Across Modes

The Interim Report stated:

Characteristically, trucking is a low capital/high operating cost industry, and fuel varies directly with operating volumes. As a percentage of total operating costs, fuel expense varied from seven to twenty percent in 1969. These figures would be somewhat higher today due to the steep increases in fuel prices.

Comparison of Truck Fuel Expenses with Other Modes

	<u>Percent of Total Operating Costs</u>
Rail (all classes)	4%
Truck    Class I (Common)	7%
Class I (Contract)	10%
Air (All scheduled carriers)	12%

The wide variation in fuel expense percentages reflects differences in energy efficiency and fixed capital intensiveness, e.g. the railways have large fixed capital costs in right of way, track and terminals that by definition do not vary with traffic volumes in the short term. The impact of fuel cost increases affects each mode differently, depending on the relative importance of fuel to other costs.

It is worth noting that the fuel cost pressure on rail, trucking's chief competitor, is similar to that of trucks.

Trucking ranks between air and rail in fuel efficiency as follows:

	<u>BTU/Ton-Mile</u>
Pipeline	450
Marine	540
Railway	680
Trucks	2,300
Airplanes	37,000

These relative efficiencies will not change in the foreseeable future unless there are substantial changes in technology.



The ranking of transportation modes has been the subject of significant argument over recent years, initiated particularly and not strangely by the trucking community. Some criticize the "ton-mile" as a measure of transport output. One 1975 paper stated:

The number of ton-miles per gallon of fuel obtained by a given mode of transport depends upon so many variables that any generalization is bound to be misleading. This is true intramodally as well as intermodally. Among the reasons that such comparisons are misleading:

1. Fuel usage varies with the gross weight moved, not with the load carried. Relative fuel efficiency, however, is a factor of the cargo weight to the tare weight of the vehicle.
2. Fuel usage varies with the actual distance freight is moved, not with the distance between the points served. This has significance in intramodal as well as intermodal comparisons.
3. Fuel usage by mode varies with the volume of freight to be moved between the same points at a given time and over time...

Obviously, the importance of moving people cannot be determined on the same basis of their weight; neither can efficiency. The same principle applies to the movement of freight. A flat bed truck combination carrying steel would have an empty weight of about 13.5 tons and carried load of about 23 tons, for a gross weight of 36.5 tons. A refrigerated combination carrying lettuce would have an empty weight of about 15.5 tons and a carried load of about 10.5 tons for a total of 26.0 tons. The gross weight, the weight that influences fuel consumption - all other things being equal - of the combination loaded with steel would be only 40 percent greater than the one carrying lettuce but its carried load would be 120 percent more.

Since, as pointed out above, fuel consumption would not increase in direct proportion to the increase in the carried load, the relative number of ton-miles that could be obtained between the same points per gallon of fuel when hauling steel would greatly exceed those that would be obtained hauling lettuce. Nevertheless, steel is hardly a substitute for lettuce, and both must be hauled, regardless of the relative number of ton-miles per gallon.

In addition, the same shipment moving between the same points can produce different ton-mile aggregations, depending upon several

factors which must be considered when comparing relative energy efficiency. For example, railroad routes between the same points are rarely the same. If two railroads operate between identical points and Railroad A operates over a route that is 20 percent longer than that of Railroad B, the number of miles when multiplied by the weight of the shipment will result in 20 percent more ton-miles by Railroad A in moving the same freight. Yet, each railroad would be performing the same function, and moreover, Railroad B might be performing it better since it is likely to provide faster service at a lower total consumption of fuel. The longer haul actually using more fuel would produce a greater rate of fuel efficiency when measured in ton-miles per gallon.

Moreover, circuitousness has a decided bearing on relative fuel efficiency in intermodal comparisons. Commenting on this point, Mark L. Smith wrote:

The significant factor that has not been considered in any reports to date is that average BTU consumption per net ton-mile alone is not an accurate comparison between water and rail. Water interests have been silent about inland barge and coastwise vessel mileage circuitousness over rail mileage between common points.

When railway movements are compared to movements by trucks between the same points the effect of circuitousness is also significant. Railway routes between the same points are generally longer than highway routes. In some instances, the rail mileage is more than double the highway distance. Thus, on the same shipments between these points, rail ton-miles could be double truck ton-miles on this basis alone...

The prices paid for transportation reflect the value of the service as perceived by the shipper. In other words, since transportation does not produce goods, modes cannot be compared by physical measurement. They can and should be compared by their dollar value of production, i.e. gross freight revenue or expenditure.

Using this method, freight transportation analysis can focus on the value of the service supplied and the value-determining physical attributes of that service. Consider Dr. Ralph L. Nelson's statement in discussing trucking operations:

The dollar value of service (freight revenue) provides a common measure of trucking output which may be used when comparing and analyzing the output of different carriers in any single year. Adjusted for price level changes, revenues also provide the means for describing changes in the output of the same carrier or group of carriers from one year to the next.

Another approach that might be taken is to consider the value of the goods moved as an indicator of the economic importance of transportation. This concept is illustrated in Table (4) Column "C". This column shows that trucks, although moving fewer ton-miles, are carrying items which are high in value. Shippers of these higher value goods demand and can afford to pay more for the better service that trucks provide. Regrettably, the latest data for value of shipments is 1967. However, when the 1972 data is made available, it will almost surely show that trucks moved even greater portions of high value shipments.

Another measurement of transportation output that might be used is value added. As applied to manufacturing "Value Added" is:

The difference between the value of goods and the cost of materials or supplies that are used in producing them. Value Added is derived by subtracting the cost of raw materials, parts, supplies, fuel, goods purchased for resale, electric energy and contract work from the value of shipments. It is the best money gauge of the relative economic importance of a manufacturing industry because it measures that industry's contribution to the economy rather than its gross sales.

Column "D" in Table (4) reflects the portion of value added by manufactures handled by each mode. This is computed by multiplying the percentage share of tons handled by each mode by the dollar Value Added by production measured at the 3 digit level of the Standard Industrial Classification (SIC).

A paper entitled Trucking and Energy; Some Myths Explored presented to the annual conference of the Roads and Transportation Association of Canada (RTAC) in 1975, concluded:

Available Canadian evidence does not support the contention that there is a three-fold energy efficiency advantage in favour of rail over truck under actual operating conditions when comparing commodity movements where rail and truck compete. Given the reality of transportation, precious few of the commentators seem to appreciate that there is no massive potential for a shift in truck traffic. Where there is some potential in long-haul inter-city trucking, the relative modal efficiency of rail over truck may be so slight that it would perhaps be better to leave it to the price mechanism, which would presumably reflect petroleum product availability, to make any adjustment.

TABLE 4

Ton-miles, Value of Transportation  
Value of Shipment, and Value Added  
by Mode of Transport - 1967

	A		B		C		D	
	Ton-Miles (millions)	Percent	Value of Transportation Expenditures (Gross Rev.) (millions)	Percent	Value of Shipment <sup>3</sup> (millions)	Percent	Value Added <sup>3</sup>	Percent
Rail	731,000	41.4%	\$10,148	24.1%	156,673	32.0%	\$ 68,581	30.6%
Truck <sup>1</sup>	389,000	22.0	28,930	68.7	297,211	60.7	141,644	63.3
Other <sup>2</sup>	645,000	36.6	3,020	7.2	35,342	7.3 <sup>4</sup>	13,602	6.1 <sup>4</sup>
Total	1,765,000	100.0%	\$42,098	100.0%	489,226	100.0%	\$223,827	100.0%

<sup>1</sup> Includes private and for-hire, regulated and exempt intercity motor carriers.

<sup>2</sup> Oil pipelines (regulated and non-regulated), inland waterways (including the Great Lakes, but excluding International, Coastal and Intercoastal); and Airways.

<sup>3</sup> For manufactured goods only.

<sup>4</sup> Excludes pipelines.

Source: *Transportation Facts and Trends*, 1973.  
*Census of Transportation*, 1967.  
*Census of Manufactures*, 1967.



The statistical base for decision-making in Canada with respect to the energy consumption of transport is extremely poor especially with respect to trucking data. Before policy recommendations are generated, efforts should be made to conduct research which will substantiate the policy proposals. In particular, lane studies are required including assessments of empty backhaul in order to determine if, in fact, there is a significant potential for fuel savings with a modal switch. Further, a thorough input and output analysis of energy consumption is required for the whole transportation sector before rash policy decisions are put into effect.

For the trucking industry, proven methods of conserving energy already exist and there is an increasing<sup>6</sup> impetus towards conservation as the factor price of fuel increases.

Tables (5) and (6) following are extracted from the same paper.<sup>7</sup>

and indicate the trends in transportation energy consumption 1958 - 1972.

#### 1.3.4 The Potential Impact of fuel Shortages and/or a Price Increase on Goods Transportation

A study released by, but not necessarily reflecting

the policy of the Ministry of Transportation and Communications,

Implications of Energy Shortages to Transportation in Ontario stated:

Energy conservation for freight movement can be achieved by shifting to more energy-efficient modes, such as the shifting to rail for freight now being moved by trucks which are energy intensive. In addition, it is possible to increase the load factor by better consolidations. It has been demonstrated that, in modal choice within the freight transport sector, there are definite physical constraints which disallow freedom of modal shifts. Also, Sievwright has demonstrated that Canada's transportation system seems to have been historically, or intuitively aware of the energy intensity of the various modes of transportation in both passenger and freight movements...

This means that only minor shifts in modal use in freight transport will occur resulting in an insignificant impact on total fuel use. As far as consolidation is concerned, it will be costly and will reduce the reliability and speed of service required by a lot of the freight presently carried by truck. It is, therefore, not an attractive alternative, and that leaves the option of reduction of the amount of freight movements. This will leave an adverse multiplying effect on the economy and will be less tolerable. The conclusion is that any physical shortage of fuel will not affect the freight transport sector to a great degree.

TRENDS IN TRANSPORTATION ENERGY CONSUMPTION  
1958-1972

---

<u>Year</u>	<u>% of total energy budget consumed by transportation</u>	<u>% of transporta- tion budget con- sumed by road users</u>	<u>% of transporta- tion budget con- sumed by road diesel users</u>
1958	27.9	67.5	2.06
1959	26.2	69.4	1.95
1960	25.6	72.6	2.28
1961	25.3	72.9	2.28
1962	25.0	73.5	2.31
1963	24.9	74.2	2.33
1964	24.6	73.9	2.28
1965	24.5	74.0	2.50
1966	24.8	73.9	2.81
1967	24.8	74.2	3.04
1968	24.6	75.4	3.20
1969	24.1	76.0	3.67
1970	23.9	76.2	3.79
1971	24.1	76.3	3.91
1972	24.3	76.4	4.07

NOTE: (1) All comparisons made on a B.T.U. basis  
 (2) Road diesel users includes buses and urban transit

Year	Percentage Road Transportation Budget Consumed by Gas Users	Percentage Road Transportation Budget Consumed by Diesel Users
1958	96.9%	3.1%
1959	96.2%	2.8%
1960	96.8%	3.2%
1961	96.9%	3.1%
1962	96.8%	3.2%
1963	96.9%	3.1%
1964	96.9%	3.1%
1965	96.6%	3.4%
1966	96.2%	3.8%
1967	95.9%	4.1%
1968	95.8%	4.2%
1969	95.2%	4.8%
1970	95.0%	5.0%
1971	94.9%	5.1%
1972	94.7%	5.3%

Footnotes: (1) All comparisons made on a B.T.U. basis  
 (2) Road diesel users includes buses and urban transit

TABLE 6

It is concluded above that freight traffic would not be affected significantly under the physical shortage of transportation fuel up to approximately 10 - 15 percent shortfall. This is more true under the situation of fuel price hike. There are many reasons for the lack of responsiveness to changes in fuel price level.

In intra-urban movements, there is no satisfactory substitute to the trucks which have all the versatility, flexibility and maneuverability required in an urban environment. It is only the inter-city goods movements that are subject to possible diversion onto other kinds of more energy efficient modes, such as the rail and water. Even this portion of the goods movements are not believed to be very price elastic because of the following reasons.

First, activities in goods movement have a direct but multiplying effect on the state of the economy. To avoid a devastating effect to the health of the general economy, it is hoped that the total volume of goods required to be moved will continue to grow.

One may argue that better planning in production, warehousing and scheduling will decrease the absolute number of goods traffic movements and yet move the same quantity of commodities. This leads to the second reason for the small price-elasticity of goods movements. A business logistics system is involved with not only the dispersion of finished goods to customers, but other aspects such as storage, gathering of raw materials and supplies, characteristics of ordering, replenishing of inventories, etc. Considering all these factors an optimal system is determined, which may call for a frequent and small delivery schedule to minimize the warehousing costs. Locations for the production facilities are determined in the same process. Most important is that once these decisions have been made, major investments will take place and thereafter, changes will be difficult to implement.

Furthermore, when fuel price escalates, there are three options available to the shipper. One is to switch to a lower cost mode. A second is to pass on the extra cost to the purchaser, but in a competitive market, the only alternative, perhaps, is to absorb the cost increase and thereby reduce profit margins. The limitation of the first option have been discussed in previous sections. Therefore, it is believed that the second and third options, which will have no impact on transportation, will be the more likely course of action at a time of fuel cost escalation. This can be confirmed by the examination of Tables (7 and 8). In Table (7) it shows that fuel cost of the freight transport mode ranges only from 3.6 to 18.4 percent of total operating revenues. Moreover, the coefficient of transport cost to the purchaser price has an even lower value. (See Tables 9, 10 and 11).



Table [7] ENERGY FUEL COSTS FOR VARIOUS TRANSPORTATION MARKET  
1970

		Fuel Cost as a Percentage of Total Operating Revenues
Intercity Package Freight	- truck	8.43
	- rail	3.55
	- air	10.64
Intercity Bulk Freight	- rail	3.55
	- water	6.93
	- oil pipeline	5.20
	- gas pipeline	18.42
Urban Freight	- truck	8.43
Intercity Passenger	- automobile**	24.40
	- air	10.64
	- bus	9.38
	- rail	7.03
Urban Passenger	- automobile**	24.40
	- transit	7.26
International Air		10.64
Deepsea Marine		5 - 20*

\* Conventional general cargo (5); large tanker (20).

\*\* Automobiles do not produce revenue; these figures are an estimate of fuel as a percentage of operating costs. For analytical purposes the auto operating costs are treated as if they were operating revenues.

Table [8] EFFECT OF ENERGY COST INCREASES ON INDUSTRIES, BY SECTOR

<u>Economic Activity</u>	<u>Transport Cost<sup>1</sup> Coefficient</u>	<u>Energy Cost Coefficient<sup>*</sup></u>	<u>Energy Costs Within Trans. Costs as % of Gross Output (Purchaser's Price)</u>
	%	%	%
Primary Industries	0.99	3.55 - 8.43	.04 - .08
Manufacturing Ind.	1.98	3.55 - 10.64	.07 - .21
Tobacco Products	0.62	3.55 - 10.64	.02 - .07
Non Metallic Mineral Products	4.95	3.55 - 10.64	.18 - .53
Tertiary Industries	0.92	3.55 - 10.64	.03 - .10

<sup>1</sup> For source of this coefficient, see Table A.7.1 - A.7.3. in the Appendix,  
Transport Cost Coefficient = Transport Cost/Purchaser Price.

<sup>\*</sup> Energy Cost Coefficient =  $\frac{\text{Energy proportion of transport cost}}{\text{Total transport cost}} \times 100$

TABLE [9]

TRANSPORT COST COEFFICIENTS - PRIMARY INDUSTRIES, CANADA, 1961

Industry	Value of Output (Purchaser Prices)	Transport Cost <sup>*</sup> Margin	Transport Cost Coefficient
	, 000 dollars	, 000 dollars	%
Agriculture	2,858,550	45,196	1.58
Fishing & Trapping	123,588	1,386	1.12
Mining	2,255,609	11,181	0.50
Forestry	821,369	2,120	0.26
All Industries	6,059,116	59,883	0.99

Source: The Input-Output Structure of the Canadian Economy, 1961,  
Statistics Canada

These transport costs are associated with the movement of factor inputs only and do not include transport costs associated with the shipment of final products.

TABLE [10]

TRANSPORT COST COEFFICIENTS FOR TWO DIGIT MANUFACTURING INDUSTRY  
GROUPS, CANADA, 1961

Two Digit Industry Group	Value of Output (Purchaser Prices)	Transport Cost Margin	Transport Cost Coefficient
	, 000 dollars	, 000 dollars	%
Non Metallic Minerals	696,799	34,526	4.95
Wood	1,059,688	38,866	3.67
Food & Beverage	5,156,928	135,360	2.62
Chemical & Chemical Products	1,497,638	37,083	2.48
Furniture & Fixtures	366,268	6,989	1.91
Transportation Equipment	1,945,195	37,031	1.90
Paper & Allied	3,704,412	70,106	1.89
Primary Metals	3,900,858	72,280	1.85
Rubber	339,496	5,402	1.59
Textile	884,133	13,554	1.53
Printing & Publishing	874,780	12,950	1.48
Machinery	765,431	11,041	1.44
Metal Fabricating	1,554,306	21,397	1.38
Electrical Products	1,289,901	17,224	1.34
Miscellaneous			
Manufacturing	648,598	8,636	1.33
Knitting Mills	221,120	2,540	1.15
Leather	295,255	3,349	1.13
Clothing	816,941	7,437	0.91
Petroleum & Coal Products	1,242,346	8,405	0.68
Tobacco Products	334,992	2,091	0.62
All Manufacturing	27,595,085	546,267	1.98

Source: The Input-Output Structure of the Canadian Economy, 1961,  
Statistics Canada



TABLE [11]

## TRANSPORT COST COEFFICIENTS - TERTIARY INDUSTRIES, CANADA, 1961

Industry	Value of Output (Purchaser Prices)  , 000 dollars	Transport Cost Margin  , 000 dollars	Transport Cost Coefficient  %
Construction	7, 055, 173	200, 073	2. 84
Service	4, 259, 169	24, 113	0. 57
Transport, Storage and Communications	4, 619, 256	13, 755	0. 30
Trade	6, 862, 695	18, 071	0. 26
Utilities	1, 033, 510	980	0. 09
Finance, Insurance, Real Estate	4, 142, 273	549	0. 01
All Industries	27, 972, 076	257, 541	0. 92

Source: The Input-Output Structure of the Canadian Economy, 1961  
Statistics Canada

Therefore, the sensitivity of the final purchase price to any fuel price increase is very small...The highest is only 0.5 percent in the non-metallic mineral products of the manufacturing industries. Although these data are somewhat out-of-date, the small absolute value of the ratio of energy cost to gross output and the stable energy price until 1973 makes the argument still a valid one. Even if we assumed the ratio has doubled since 1973, the highest ratio will still only be in the vicinity of one percent. This means if fuel cost were to go up one hundred percent again, the effect on the purchaser's price (gross output) will be an increase of approximately one percent.

In addition, Mooz has shown that even a tenfold increase in fuel price will not alter the relative intermodal competitiveness with the exceptions of some modal competitions which do not lie in the interest area of this project, such as between pipeline and rail.

#### 1.4 Fuel Savings in Trucking Movements

This question breaks into three subjects. One is the impact of licensing on current consumption levels; two is the vehicle, its design and its physical movement on the highway and three is the availability and use of alternate renewable fuels by truck.

##### 1.4.1 The Licensing Process - A Cause of Empty Miles?

The Committee stated in the Interim Report:

In reference to goods transport, the term "backhaul" is oversimplified, given the nature of many of today's trucking concerns. There are relatively few simple "Backhauls". Many common carriers, depending on the nature of the goods transported, are now moving in more complex patterns - not from A to B, and returning; but rather from A to B to C to A, in complex circular or triangular patterns. A more descriptive term is "empty movements".

The contention that current licensing procedures of the Ontario Highway Transport Board are not conducive to the securement of loads to offset empty mileage has been made by a number of groups before the Committee and by others

in the United States. It is a real contention by those who favour what is popularly termed "deregulation".<sup>9</sup> It is behind, in part, the opposition to Bill 4 which addressed the situation of single trip leasing.

The Committee went on to discuss the information which had to that time been presented in testimony. The discussion was set with the comments of experts. The Committee stated:

Many licences are restricted by the operating authority, thus, contributing to the possibility of unbalanced load operations where the inability to legally handle return load means empty running miles...<sup>10</sup>

Carriers cannot use long term scheduling like a manufacturer with sales made before production general patterns emerge but the emphasis is always service on a day to day basis...<sup>11</sup>

The customer must be made to realize that by abusing the availability truckers have, the problem arises of empty miles or lack of cube utilization in trailers. This utilization, in the speaker's opinion, averages 20% in Ontario...by accepting two day delivery between cities, the trucker can achieve maximum load factors, perform<sup>12</sup> the service profitably and achieve good fuel conservation...

The Ontario Trucking Association in evidence before the Committee, indicated the results of its survey taken to determine empty highway miles as a percentage of total highway miles of Class "A", "X", "C" and "D" carriers. The survey, taken subsequent to the Ontario Trucking Association's initial appearance before the Committee on July 21, 1976, indicated these results:

Class "A" and "X"	8.0%
Class "C" and "D"	39.4%

These percentages indicate trucks or tractor trailers running with NO payload.

A carrier, testifying in Kingston, indicated that company's situation as follows:<sup>13</sup> "51 full forward to 49 full return, on average".

The Committee does not feel that entry control, per se, is a limiting factor at all. What may be at issue, of course, is the scope (or lack of it) in the terms and conditions applied to an operating authority.

An assumption must be, if one argues this way, that there is freight now existing which is not moving. If it is moving, someone is carrying it. A rationalization of authority may only serve to shift rather than reduce empty miles. At issue, appears to be new sources of freight.

If we are to come to grips with this problem, we must also know significantly more about (a) the empty mileage in the private trucking sector; (b) the relative frequency and energy use figures for bob-tailing runs (as opposed to empty mileage); and (c) the relative frequency and energy use figures for partially loaded miles. The Committee cannot, from available knowledge, come to a conclusion on the empty mileage problem. The Committee has discovered, as perhaps those who have gone before already knew, that the problem of empty miles is complex, many sided, and from time to time, highly emotional...The significance of the problem is not sufficiently well defined, and we are not aware of what weight to assign to each of the many causes to allow an evaluation of the problem.

Since the Interim Report, the Ontario Trucking Association has done a survey of empty and light miles. The report of the survey is attached as Appendix S. The main findings are summarized below. Readers are referred to Figure 6a which indicates the results.

That figure depicts the relative importance of empty miles for various types of for-hire carriers. In total, it is estimated that 22% of all miles driven by Ontario for-hire carriers are empty... This varies from about 4% empty for the small Class "A" carriers to a high of 50% or more empty for Class "E", "F", "T" and some types of "D" carriers. Section 3.3 examines the responses and the information obtained in this study for each of the carrier types depicted on Figure 6. Chapter 4 develops this further by describing certain specific examples.

The carriers surveyed had more difficulty producing quantitative information on light miles (Page 3 of Table 12). From the scanty information available, light miles do not appear to be a major problem for for-hire carriers, they total less than 5% of total miles for the firms participating in this survey.

The information from private carriers that was included in this study would seem to suggest that empty miles assume about the same importance for private as they do for for-hire truckers; light miles are much higher for private truckers (31% as compared to 5%). However, given the sample size, these two observations should be regarded with some caution.<sup>14</sup>



FIGURE 6.3

EMPTY HIGHWAY MILES BY LICENCE CLASS

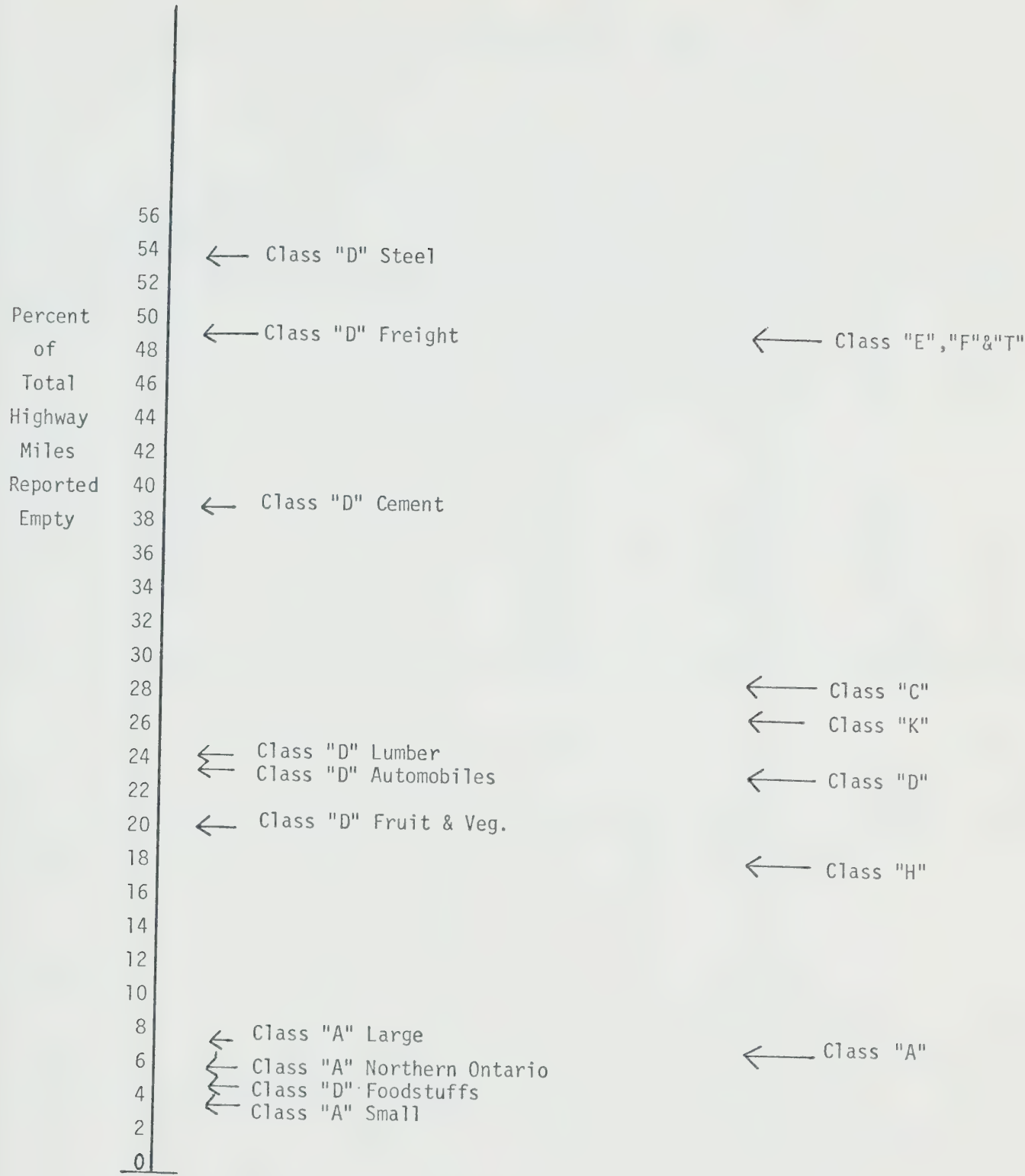


TABLE 12  
SUMMARY OF BASIC DATA

1	2	3	4	5
CARRIER TYPE	TOTAL INTER-CITY HIGHWAY MILES ( '000)	TOTAL PIGGYBACK MILES ( '000)	TOTAL MILES ( '000)	AVERAGE NO. OF HIGHWAY POWER UNITS
Class A - lrg.	78,792.3	27,947.3	106,739.5	789
Class A - sml.	1,693.8	0.0	1,693.8	51
Class A - nrth.	10,174.0	0.0	10,174.0	98
Class A - TOTAL	90,660.1	27,947.3	118,607.4	938
Class C	51,319.9	311.6	51,631.5	595
Class D-fr&veg.	3,547.1	0.0	3,547.1	50
Class D-lumber	943.7	0.0	943.7	12
Class D-foodst.	8,273.8	0.0	8,273.8	172
Class D-cement	6,800.0	0.0	6,800.0	150
Class D-steel	1,609.4	0.0	1,609.4	41
Class D-auto.	10,403.1	0.0	10,403.1	175
Class D-freight	185.6	0.0	185.6	6
Class D-TOTAL	31,762.7	0.0	31,762.7	606
Class E	265.7	0.0	265.7	8
Class F-brick	440.0	0.0	440.0	9
Class F-lvstck.	1,218.0	0.0	1,218.0	16
Class F-TOTAL	1,658.0	0.0	1,658.0	25
Class H	952.0	0.0	952.0	20
Class K	3,063.9	0.0	3,063.9	50
Class T	3,250.0	0.0	3,250.0	65
TOTAL FOR-HIRE	182,932.4	28,258.9	211,191.3	2,307
Private	10,790.9	0.0	10,790.9	168
GRAND TOTAL	193,723.3	28,258.9	221,982.1	2,475

TABLE 12 (page 2)

SUMMARY OF BASIC DATA

1	6	7	8	9
CARRIER TYPE	EMPTY INTER-CITY HIGHWAY MILES ( '000)	EMPTY PIGGYBACK MILES ( '000)	TOTAL EMPTY MILES ( '000)	BOBTAILED MILES (included in columns 6 & 8) ( '000)
Class A - lrg.	6,244.4	688.2	6,436.7	206.2
Class A - sml.	60.0	0.0	60.0	2.0
Class A - nrth.	680.4	0.0	680.4	3.1
Class A - TOTAL	6,984.9	688.2	7,177.1	211.3
Class C	12,527.9	169.0	12,696.9	11.0
Class D-fr&veg.	737.4	0.0	737.4	-
Class D-lumber	235.0	0.0	235.0	-
Class D-foodst.	441.5	0.0	441.5	0.0
Class D-cement	2,700.0	0.0	2,700.0	-
Class D-steel	876.9	0.0	876.9	0.0
Class D-auto.	2,501.6	0.0	2,501.6	0.0
Class D-freight	92.8	0.0	92.8	-
Class D-TOTAL	7,585.2	0.0	7,585.2	0.0
Class E	132.9	0.0	132.9	0.0
Class F-brick	220.0	0.0	220.0	0.0
Class F-lvstck.	80.0	0.0	80.0	0.0
Class F-TOTAL	300.0	0.0	300.0	0.0
Class H	178.3	0.0	178.3	0.0
Class K	847.6	0.0	847.6	0.0
Class T	1,625.0	0.0	1,625.0	-
TOTAL FOR-HIRE	30,181.6	857.2	30,542.8	222.3
Private	2,633.4	0.0	2,633.4	- -
GRAND TOTAL	32,815.0	857.2	33,176.2	- -

TABLE 12 (page 3)

SUMMARY OF BASIC DATA

1	10	11	12	
CARRIER TYPE	"LIGHT" INTER-CITY HIGHWAY MILES ( '000)	"LIGHT" PIGGYBACK MILES ( '000)	TOTAL "LIGHT" MILES ( '000)	
Class A - lrg.	480.0	61.7	541.6	
Class A - sml.	203.4	0.0	203.4	
Class A - nrth.	684.6	0.0	684.6	
Class A - TOTAL	1,368.0	61.7	1,429.7	
Class C	2.0	0.0	2.0	
Class D-fr&veg.	-	-	-	
Class D-lumber	-	-	-	
Class D-foodst.	-	-	-	
Class D-cement	-	-	-	
Class D-steel	-	-	-	
Class D-auto.	-	-	-	
Class D-freight	-	-	-	
Class D-TOTAL	-	-	-	
Class E	-	-	-	
Class F-brick	-	-	-	
Class F-lvstck.	-	-	-	
Class F-TOTAL	-	-	-	
Class H	110.3	0.0	110.3	
Class K	125.0	0.0	125.0	
Class T	-	-	-	
TOTAL FOR-HIRE	1,605.3	61.7	1,667.0	
Private	1,960.7	0.0	1,960.7	
GRAND TOTAL	3,566.0	61.7	3,627.7	



The Ontario Trucking Association has acknowledged some of the shortcomings of the survey. For example, piggyback movements were included in the total mileage figure of large Class A carriers and should not have been. It has been estimated that proper exclusion of this consideration would yield an average result approximately 2% higher than the figure "22% of all highway miles are driven empty".

Regardless of the strengths and weaknesses of the survey, it is consistent with figures quoted previously on the for-hire industry. The results must be accepted with reservation.

The Committee stated in the Interim Report:

The fact that trucks travel empty for part of a total trip has been a part of the transportation system for many years. Because of the recent energy shortage in 1973, the empty mileage situation has become highly visible and controversial. Adding to the controversy are the contentions that empty miles may in large part be caused by economic regulation of the industry.<sup>15</sup>

There are a large number of causes for empty miles. Some apply to all types of carriers, others are peculiar to certain, specialized trucks. In this latter category, the Committee contends that given necessary vehicle designs to move certain commodities, it is impossible to eliminate empty miles.

Tank carriers are an example. They carry liquid bulk materials, many of which are not compatible one with another and as a result, there must be empty movement. A carrier carrying liquid chemicals one way cannot return with another chemical for fear of contamination. A trailer designed to carry automobiles cannot be used for any other purpose. Dump trucks usually operate full one way only.

In considering empty mileage, one must consider the effect of natural traffic imbalances between certain communities. It may be that inherent trade imbalances between areas constitute the single most important factor contributing to empty miles.<sup>16</sup>

The Committee has nonetheless made three recommendations which are motivated in part by the wish to make more flexible the licensing process to help reduce consumption in particular cases. Those were:

1. trip leasing between licensed carriers,
2. interchange of trailers or loads between two licensed "C" carriers, and
3. a removal after hearings of the generally applied North Bay restriction.

Piggyback is a trade term for the movement of commercial vehicles (usually trailers) on railway flat cars. Similar terms are fishyback for water transportation and birdieback for air. All tariff publications refer to the rail movement as "trailer on flat cars" or "TOFC".

Such intermodal co-operation has been the subject of academic comment for many years. The railways originally resisted the concept of helping the road carriers. Today, T.O.F.C. revenue undoubtedly contributes to rail profit. In any event, the removal of commercial vehicles from the highway can (and does) result in substantial savings of fuel, manpower and other items such as insurance, tire wear and maintenance. T.O.F.C. movements can take place on Sundays or holidays when traffic congestion is dense.

When and where it is more energy efficient for rail and truck carriers to cooperate in this way, T.O.F.C. movements should be sought by industry and encouraged by the Government.

#### 1.4.2 The Vehicle and its Design

##### 1.4.2.1 Specific Devices

It is clear that vehicle design and the use of certain after market devices such as airfoils and radial tires can reduce the energy consumed by a truck moving on a highway.

For example, the Committee stated in the Interim Report:

Conservation of energy is a major goal of government; as well a saving in fuel consumption is in the financial interest of the trucking firm.

Several potential fuel saving techniques can be applied by the trucker. A conservative fuel saving of 13 percent has been documented for an 80,000 lb. tractor travelling at 60 m.p.h.:

	<u>Saving</u>
Air Resistance	5%
Rolling Resistance	6%
Accessory (Thermatic Fan)	2%

Additional savings are also available through a more efficient drive train, the elimination or reduced use of air conditioning and lower operating speeds.

Given a 10 percent share of total operating cost for fuel, these savings are in the order of one to two percent of total operating costs.

Energy is a key natural resource; it is scarce and expensive. To the trucker, fuel represents a significant expense, where savings would improve both conservation and profitability.<sup>17</sup>

The Committee then examined the projects which were under way and, under the heading "What is Being Done in Government and the Industry", stated at page 50:

In 1975, the "Advisory Council on Energy Management in Truck and Vehicle Operations" was formed. This body includes knowledgeable representatives from the truck operating industry,<sup>18</sup> truck manufacturing industry, the public sector and government. The Council's function is to consider and make recommendations related to the movement of goods by truck to conserve energy and to bring about increases in the production of the road transportation system.

The Advisory Council held a workshop one year ago, October 16, 1975, in Toronto. It represented in the Council's own words, "the First time that representatives from the trucking and vehicle manufacturing industries, the public sector and government have met to address themselves cooperatively to this common and crucial problem."<sup>19</sup>

One of the witnesses discussed the problems of fuel conservation and energy efficiency. His company has designed a revolutionary new truck. Ten of them are now in operation at a project cost of ten million dollars. He stated, "The truck gets more miles per gallon, creates much less noise, is superior in driver comfort and the entire power train - engine, transmission, rear axles and rear tires - can be changed in two man-hours. Yet we could find no manufacturer to tool up to manufacture and market it because of the general economic conditions. But we still learned things from it. Air shields and vortex panels to reduce drag, radial tires to reduce friction - all giving increased miles per gallon. We learned to derate engines to operate at less revolutions per minute. We regeared to operate at lower speeds, and reduced diesel injector sizes to get leaner burning, more energy efficient engines."<sup>20</sup>

The Committee supports the concept of discussion between industry and government and urges further research. The Committee commends organized industry for recommending the establishment of the Advisory Council.

As indicated in the Advisory Council Workshop Report, potential fuel savings could be generated through:

- reduced wind resistance - 6% to 10% improvements were noted in vehicles equipped with airfoils;



- use of diesel fuel - a diesel truck will save between 25% to 70% of fuel used in similar operation by a truck with a gasoline engine;
- radial ply tires - 6% improvements noted in addition to other benefits of longer wear, better and safer ride, etc;
- cooling systems - correct application of automatic radiator shutters can result in decreased fuel consumption of 4% to 9%;
- use of synthetic oils;
- self-steering trailers - manufacturers claim of 10% to 20% fuel savings;
- automatic versus manual transmission in city use. <sup>21</sup>

Other savings can be realized through the provision of excellent highway infrastructure, routes to maintain speed, geometrics, pavement surfaces and others.

There is considerable evidence to suggest that these measures, if effectively taken, can and will reduce the fuel consumption of most over-the-highway truck movements. The Committee notes the recent action by the Federal Government to exempt wind deflectors from the 12% Federal Sales Tax (under the Federal Excise Tax Act, devices may be exempted from federal tax if they are energy-saving devices). The Ontario Government has taken similar action in its recent budget to exempt deflectors from provincial sales tax.

These actions are commendable and the two senior levels of government should consider a reduction in tax on other devices which will decrease the fuel consumed by trucks.

1.4.2.2 Doubles and Pups

The Committee is aware of the controversy surrounding the use of pup trailers and of allowing longer double trailer combinations. The Committee cannot take a position on the safety of their use and reports only that some carriers testified that if double trailers with longer length limits were permitted in Ontario, significant economies could result to the carriers and shippers of certain commodities. One carrier recommended:

Legislation should be enacted to permit the hauling of two forty-five foot vans between Windsor and the Ontario-Quebec border on the 401. This is now done on the New York throughway and some of the committee members were able to see this operation in Buffalo on August 16.

Two forty-five foot trailers hauled on the 401 would create substantial savings. These savings would be passed on to the shipper in<sup>22</sup> the form of reduced rates and ultimately to the consumer.

The Ontario Trucking Association stated to the Committee on Highway Safety, September 14, 1976:

There is every evidence that the operation of "pup" trailers is appreciably safer than other combination vehicles. They provide significant economies in the cost of transportation as well as energy conservation. Ministry of Transportation and Communications findings, evidence from numerous U.S. sources and Ontario Trucking Association's own study sustain this.

Despite the contentions that the regulated industry is seeking increased sizes and weights, the allegation is completely false. The present limitations have been in effect since 1968. Although four Western Provinces now permit the length of "doubles" to be in excess of that in Ontario, thus representing a significant restriction on Ontario based carriers,<sup>23</sup> any such decision is being left to the judgment of the Ministry.

The Association expanded on these comments in part with the following:

A "twin-trailer" combination consists of two short, 24 to 28 feet semi-trailers, coupled together by a dolly pulled by a truck

tractor (power unit). A conventional rig has a truck tractor and one long trailer, with the most common length of a regular rig being 60 feet overall. The twin trailer combination is usually 65 feet overall, and currently permissible in all jurisdictions. Manitoba, Saskatchewan and Alberta permit up to 70 feet for the twin trailer combination. British Columbia permits 72 feet by permit.

There are up to 56 linear feet of cargo space with a twin trailer and 45 linear feet for the conventional combination. Since the power unit is constant in both connections, the increased capacity of the twin combination is obvious.

Following extensive "in use" tests conducted by the Department of Highways in Alberta several years ago, satisfying these officials as to the safety, roadability and manoeuvrability of such units, triple combinations with a maximum length of 98 feet are being operated by special permit between Calgary and Edmonton.

Twin trailer operation contributes appreciably to the reduction of fuel consumption and improving the environment. To transport a given tonnage of light and bulky freight in twin combinations requires substantially less fuel and 30% fewer truck trips than when that same freight is carried by conventional equipment. There is significant contribution to reducing traffic congestion by virtue of the fact that each of the shorter trailers can be separated and pulled to a delivery destination much more easily and requiring less road space.

Much of the bulk size freight of today is becoming lighter in weight but occupying the same cube. As a result, it is becoming increasingly difficult to load conventional equipment to achieve maximum weight utilization and proper axle loading. General freight averages about 12½ lbs. per cubic foot. At this density, a standard 40 foot semi-trailer with an average cargo capacity of 2,700 cubic feet is physically filled at a point of about 1/3 short of its maximum legal weight.

A twin rig, however, can be loaded to full legal weight. Two 27 foot twin-trailers have a capacity of 3,600 cubic feet. This is exactly 1/3 more than a 40 foot semi-trailer. It provides an optimally efficient and economic payload; to the advantage of the shipper, the trucker and the consumer.

As far as manoeuvrability and safety performance are concerned, the standard measure is "off-tracking". This is the rate by which the rear wheels of a vehicle fail to follow the front wheels in a turning situation. The greater the rate of "off-tracking" the more difficult it is to negotiate a sharp turn, such as a city street corner. An official U.S. report to the Congress shows that, in all types of turning movement, the 65 foot, 5 axle twin-trailer has less "off-tracking" than a 55 foot, 5 axle semi-trailer. For 90° turn such as a city street intersection, the

65 foot twin has a track width 5.1 feet narrower than that of a 55 foot semi-trailer. Similar results are observed when these vehicles are compared on a  $270^\circ$  turn with 165 foot radius. This is the movement found in many expressway "cloverleafs". On such turns, the 65 foot twin has a track width of 2.1 feet less than a 55 foot, 5-axle tractor and semi-trailer.

Dramatic improvements have been made in truck airbrake systems, particularly those used in twin-trailer combinations. Recent results of tests conducted by the Automobile Manufacturers Association and the Truck Trailer Manufacturers Association for the Western Highway Institute, as compared to previous studies, showed sharply reduced stopping distances for all truck combinations. A twintrailer combination, for example, could stop in the same or shorter distances than could a typical tractor semi-trailer combination from the same speed tests...

One of the greatest psychological difficulties for the average motorist, when passing a tractor-trailer combination, is the potential "vacuum" created as well as inability to gauge the correct passing distance. A formula used by the U.S. Bureau of Public Roads computes the passing distance for different speeds. It considers all applicable factors - lengths of passed and passing vehicles, differences in vehicle speeds and pull-out and pull-in distances.

With a 10 mph speed differential (car at 60 and truck at 50 mph) it takes 15.17 seconds for the car to pass a 55 foot combination on a two lane road. If the truck being passed were 65 feet in length, the passing time would be 15.85 seconds. That is only  $\frac{2}{3}$  of a second more. Greater or smaller differences in speeds produced proportionately split second time distances. This formula yields maximum passing times in all instances. The times (and thus the time differences), may be reduced if a shorter pull-out and in is used, or if acceleration is taken into account.

A Department of Commerce Report comments:

A length of up to 75 feet would not have a significant effect on the usual passing conditions on a two lane facility. This being the case, a length of 75 feet would obviously have little or no effect on passing traffic on a highway of four or more lanes.

Several leaders in the U.S. insurance field have gone on record in support of the use of twin-trailers. The President of Transport



Indemnity Company, for example states:

Our Safety Department unequivocally feels that doubles (twin) are safe and efficient and they pose no additional safety hazard to the motoring public. During the period that doubles (twins) have been in use in the West, the overall safety record of the fleets insured by Transport has been amply demonstrated by the fact that their insurance rates have been consistently lowered...

The Ministry of Transportation and Communications has detailed the Motor Vehicle Inspection Program as applied to tractor-trailer combinations, including "pup". The record of 65% to 70% of such vehicles having defects in 1973 was reduced to less than 16% in 1975.

Based on returns from 76 fleet owners, conventional tractor-trailer equipment travelling a total of 199,914,000 miles had 870 instances of accident involvement. This produced a frequency of 4.35 per million miles. In the case of truck and full trailers, there were 20,020,000 miles with 52 accidents and a frequency of 2.6 per million miles. Figures for tractors and double trailers (pups) showed a total of 27,050,000 miles with 35 instances of accident involvement or a ratio of 1.29 per million miles. This means that the frequency for truck and full trailer was 40.23% less than conventional tractor-trailer and, for twin-trailers, 50.38% less than truck and full trailer and 70.34% less than conventional tractor-trailer.

In summary, we contend that the use of "pup" trailers produces greater efficiencies for carriers and increased economies in the cost of transportation and conservation of energy. They represent appreciable hope for advancement in highway safety. Both Ministry findings and our own conclusions sustain this contention.

While there is no denying the fact that the news media have focused public attention on instances of tractor-trailer accidents (particularly petroleum tanker units), the reality of this situation is completely distorted. Little consideration is given to the thousands of commercial vehicles and millions of miles travelled, both efficiently and safely, year-in and year-out. Our industry's responsibility to end effort to improving safety in operation, reliability of equipment and proper driver habits must remain a top priority with all fleet and individual vehicle owners. <sup>24</sup>

#### 1.4.3 Alternate Forms of Fuel

One study reported:

The rapid escalation of petroleum price impinges much more heavily on modes that cannot be converted to coal or electric power. The irony perhaps is that those modes which are heavily reliant on petroleum (such as automobile and aircraft) are those that are least adaptable to coal or electric power. Possible fuels for the use of transportation are:

Natural Gas or Methane: This is an efficient and clean fuel. The disadvantage is that natural gas is already under heavy demand even without being used by the transportation sector. The only possibility for this alternative may occur if and when coal gasification becomes economically attractive in combination with new technology development in transportation to use natural gas.

Liquefied Petroleum Gas: Same problem as the previously discussed fuel.

Hydrogen: This is also a clean fuel and can be produced economically by electrolysis of water. However, hydrogen is a dangerous gas to handle and it requires large storage tanks for a reasonable range of operation.

Electricity: The electric car is only promising in urban movements because of its limited range due to the current state of battery storage technology. Although electrically powered urban vehicles are almost certain to be marketed within another 5 - 10 years' time, its ultimate usefulness in averting the energy "crisis" is very doubtful unless its introduction is coupled with the improvement in the efficiencies of electric power generation. The reason is that the electrically powered vehicle is no more efficient than a conventional internal combustion engine in terms of energy.<sup>25</sup>

The Committee understands that the Ministry of Transportation and Communications is now involved in a joint study with the Ministry of Energy with consequences much beyond the question of empty backhaul.

The project has a firm reporting schedule and will report to the Government around the end of May 1977 with recommendations as to how energy can be saved in transportation.

The Committee commends the Government for this action. The Legislature will await the results.

1.5 Recommendations

The Committee recommends that:

1. The Ministry of Transportation and Communications proceed with haste to complete its studies on transportation energy consumption and on empty truck movements and then report its recommendations to the Government.
2. Workshops such as that held by the Advisory Council on Energy be promoted.
3. The Ministry of Transportation and Communications discuss with industry ways and means to promote and achieve freight pooling where advantageous.
4. The Ontario Highway Transport Board reflect through its decisions that pooling or interlining or rationalized pickup and delivery systems would be in the public interest in some cases.
5. The Government eliminate the sales tax on devices which are proven to reduce fuel consumed by commercial motor vehicles.
6. The Ontario Government explore the use of alternate forms of energy for transportation movements.
7. The Ministry of Transportation and Communications continue to examine and report to Government on (i) the various aspects of pup trailer operations, (ii) on the feasibility of extending existing length limits to allow the operation of longer double trailers on certain highways consistent with the laws of adjoining jurisdictions, (iii) whether pup and double trailer operations should be subject to unique licensing of the drivers and the operators.

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1. Source: Ministry of Energy.
2. Op Cit., Ministry of Transportation and Communications, Truck Transportation in Ontario, Phase 1.
3. Energy Research Group, Energy Consumption for Transportation in Canada - E.R.G. 1, Carleton University, Ottawa, For Department of Energy, Mines and Resources, Page 8.
4. The Ministry of Transportation and Communications' report relies heavily on data from various studies done outside the Ontario Government. In quoting the Chapter so extensively, it is realized that some of the figures quoted, particularly those relating to BTU/Ton-Mile, are the subject of some debate. The figures for rail, for example, may not present a true picture because amongst other problems, they do not take into account the energy consumed in moving goods from the rail destination to the consumer's premises. Some would argue that the apparent differences in BTU/Ton-Mile of truck compared to rail are inexact and misleading when one considers the total movement from "door to door".

It is not the Committee's intention to express a commitment to the particular figures quoted but rather to demonstrate that the energy consumed by transportation and in this instance, by trucks, is significant. Therefore, energy-related impacts of regulatory law and operational characteristics must be considered.

5. Flott, A.C., Batts, L.R., Roth, R.D., The Ton-Mile, Does it Properly Measure Transportation Output? Published by the American Trucking Associations, January 1975.
6. Mayes, R.R., Trucking and Energy: Some Myths Explored. For the Canadian Trucking Association, presented to Annual Conference of Roads and Transportation Association of Canada, September 23, 1975, Page 15.
7. Ibid.
8. Ministry of Transportation and Communications, Implications of Energy Shortages to Transportation in Ontario, Part II Systems Planning Branch, October 1975.



9. See The Organization of Independent Truckers' Brief, References in Advisory Council on Energy papers, Canadian Manufacturer's Association Brief and Canadian Federal of Independent Business Brief.
10. Energy Conservation in the Ontario Trucking Industry Synopsis of Papers. "1975 Workshop of the Advisory Council on Energy Management in Truck & Vehicle Operations". Published by the Ministry of Transportation and Communications, Page 50.
11. Ibid, Page 51.
12. Ibid, Page 54
13. Oral testimony by Glengarry Transport Ltd., at Kingston, August 24, 1976.
14. Ontario Trucking Association, Light and Empty Mile Survey of Selected Carriers, January 1977, Page 2.
15. See Footnote 9.
16. Bisselle, C.A., A Preliminary Assessment of Empty Miles Travelled by Selected Regulated Motor Carriers: The Mitre Corporation, McLean, Virginia, January 1976, Page 53.
17. Op Cit., Ministry of Transportation and Communications Truck Transportation in Ontario, Phase 1 (See Footnote 2).
18. The Advisory ground includes: Ontario Trucking Association, Ontario Motor League, Motor Vehicle Manufacturers Association, Ontario Road Builders' Association, Consumers Association of Canada, Ministry of Energy and Ministry of Transportation and Communications.
19. Op Cit., Energy Conservation in the Ontario Trucking Industry Synopsis of Papers, Page 3.
20. Green, Richard, Ryder Truck Rental Ltd., In oral testimony at Toronto, July 27, 1976.
21. Op Cit., Energy Conservation - Synopsis Papers, selected quotations.
22. Reliable Transport Ltd., Brief presented at Kingston, August 24, 1976, Page 10.
23. Ontario Trucking Association, Brief to the Select Committee on Highway Safety, September 14, 1976, Page 14 of Summary.
24. Ibid, Page 98 of text.
25. Op Cit., Implications of Energy Shortages...

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RECIPROCITY

2.1 Definition

As indicated in the Interim Report at page 70:

The dictionary definition of "reciprocity" is "equal rights or benefits to be mutually yielded or enjoyed; especially equal commercial rights or privileges enjoyed mutually by two countries trading together". Anything "reciprocal" is described as "acting with a backward and forward motion". In mathematics, reciprocal quantities are "quantities which multiplied together, produce unity".

Another source stated:

Reciprocity (in the context of vehicle operations) means equal and mutual rights to vehicle owners operating between two jurisdictions. It is accomplished in one of two ways. The law of a jurisdiction provides that certain privileges will be granted if the other jurisdiction will grant the same, or will reciprocate -- that is called mirror reciprocity. The other common method is by a written agreement.<sup>1</sup>

2.2 Areas of Reciprocity

The Interim Report commented briefly on the areas or types of reciprocity, while pointing out the complexities of the subject. The Committee stated:

Reciprocity covers a wide range of subjects. It applies not only to vehicle registration fees but also to fuel taxes and sales or other "third structure" taxes. There are problems in such fields as deductions for Workmen's Compensation, recognition of qualified

insurers, and extraprovincial corporation tax. Significant distinctions may be drawn between private and for-hire carriers. Bearing in mind that effective reciprocity involves negotiations with each province of Canada as well as with each state of the United States, one can appreciate the extent of the problem. It is too large for immediate solution.

The main emphasis in the past has been on licence plate reciprocity and that was the main thrust of the Committee's recommendations in the Interim Report. Straightforward licence plate reciprocity between two jurisdictions would ease the burden on some truckers by allowing those vehicles whose movement is covered by the agreement entry into (for example, Ontario) without having to pay the vehicle registration fees prescribed in Ontario for Ontario vehicles. It would also make a trip for an Ontario carrier to the other jurisdiction less costly assuming the movement is covered by the agreement.

It is important to recognize the role of operating authority. For example, assume a reciprocity agreement on licence plates existed between Ontario and any other jurisdiction, covering all for-hire and private truck movements. Such an agreement would not by itself mean that all for-hire vehicles of the two jurisdictions are entitled to operate in the other jurisdiction.

The provisions of The Motor Vehicle Transport Act and The Public Commercial Vehicles Act together require that any person operating a for-hire transportation service in Ontario must have an operating licence. To obtain one, he must apply to the Ontario Highway Transport Board. The application may or may not be issued, based on whether the proposed service will serve public necessity and convenience.

In other words, a licence plate reciprocity agreement would facilitate the transportation of private goods by private commercial



motor vehicle and of commodities from a farm or forest in a for-hire movement, because private carriage and the carriage for compensation of products from a farm or forest are specifically exempted from The Public Commercial Vehicles Act. It does not allow the transportation of goods which are not from a farm or forest and which are transported for-hire. The operator of the transportation service also must have operating authority in Ontario.

To view the problem in a proper perspective, one must recognize that there exist no legal provisions to enter into any agreements which might deal with operating authority or P.C.V. plate reciprocity. A long range solution should address this problem.

Furthermore, one must recognize the current situation that requires all for-hire operators to display a P.C.V. plate, and that all vehicles be registered under the H.T.A. (Ontario). P.C.V. plates should be available to authorized carriers from reciprocating jurisdictions without the necessity of registration of vehicles under The Highway Traffic Act.

The Committee has strongly supported the principle of entry and operational controls on the for-hire industry. Its fundamental reasoning suggests that given the commitment to economic controls, the movement of all operators, vehicles and loads authorized, should be made as efficient as possible. For this to be achieved one must recognize that different jurisdictions regulate trucking in different ways. More specifically, the United States has a very wide range of commodities exempt from ICC regulations. There has grown to be a very large group of exempt carriers in the U.S.

A booklet on this subject produced by the ICC is reproduced as Appendix S-1 to the Report and indicates the complex listings of commodities which are exempt. Listed below for illustrative purpose only, are several examples:

1. Resin - crude - exempt.
2. Wood chips for making wood pulp - not exempt.
3. Wood cut into short crosswise lengths for firewood (not sawed lengthways) - exempt.
4. Wreaths of holly or other natural material with small amount of foundation or decorative material - exempt
5. Frogs - see fish
6. Fish - frogs - live or dressed - exempt
7. Peat for use as an organic fertilizer wet with water and other solutions, decomposed in a pressure vessel and dried - not exempt.

Ontario law does not broach the question only on a commodity basis. A for-hire movement to be exempt must:

1. be a movement from a farm or forest, and
2. be a movement of a good other than livestock or milk which is a product of such farm or forest.

The major point is that there are differences between jurisdictions in exemptions from operating authority requirements. There will be many carriers who, by the nature of the commodities they transport, are exempt in U.S. law but would require operating authority in Ontario. This is independent of any licence plate reciprocity agreement which may exist.

Assuming that Ontario had struck a licence plate reciprocity agreement with jurisdiction "A", and that all the transporters were aware of mutual operating authority requirements, still other fiscal factors exist which complicate the flow of goods between the two jurisdictions. These may be sales taxes, fuel taxes and third structure taxes levied by either one or both of the jurisdictions against a trucker.

One person has stated:

There are cases where jurisdictions grant reciprocity in licence plates and in the light of the loss of revenue, although allowing reciprocity to remain in effect, have applied what are called third structure taxes; for example, weight-mile taxes to recoup the loss in revenue. A common circumstance which makes it difficult to achieve or maintain a multi-jurisdiction agreement is the jurisdiction with a high percentage of corridor movements or a jurisdiction with a small corridor mileage. 2

The imposition of third structure taxes is common by U.S. jurisdictions.

One need look no further than to Quebec-Ontario movements to witness the inequities created by unilateral imposition of sales tax and fuel tax. An Ontario short haul carrier operating into and only to the Hull area faces levies by the Quebec Government which make short haul dump vehicle operations virtually uneconomic. The lack of a reciprocal agreement on licence plates for this type of movement complicates the situation. However, on the other hand, the adverse effects of taxes and differences in operating authority requirements would substantially decrease the readily apparent cost savings from a plate reciprocity agreement to Ontario carriers.

At issue are ways and means to meet the Committee's goals of making smooth and efficient the flow of goods by highway into and out of Ontario. In the broadest perspective, a number of specific steps must be taken to achieve this goal. These include:

1. licence plate reciprocity arrangements;
2. mutual understandings and rationalization of operating authority requirements between jurisdictions;

3. agreements to waive or apportion sales tax, fuel tax and third structure taxes between participating jurisdictions; and
4. harmonization of weight, equipment, dimensional and operational laws.

The job at hand for Ontario is complex and will require co-ordination particularly between the Ministries of Transportation and Communications and Revenue. The job is vital and a start must be made.

### 2.3 Reciprocity in Ontario

Ontario is in the industrial centre of Canada. Massive quantities of goods, finished and unfinished, flow into, out of and through the Province. It is at the hub of the northeastern part of the North American continent.

It is therefore of significant interest to Ontario citizens and shippers and those of other jurisdictions that Ontario be accessible for goods movements.

The Committee stated in the Interim Report:

Ontario cannot be an island in a community of provinces and states which are reciprocating with one another. It should not build a tariff wall by making it difficult for carriers from other provinces to enter Ontario. Nor can it erect barriers to the export or import of goods to and from the United States as that is the task of the Government of Canada.

The Committee's information is that Ontario is far behind all other provinces and states in recognizing the principles set forth above.

Prior to its Interim Report, the Committee heard a great deal of criticism of Ontario, not only for its lack of reciprocal agreements but also for its apparent unwillingness to negotiate.



It was stated in the Interim Report that:

Ontario shippers and carriers claim that they are adversely affected by being required to pay separate and additional fees and charges in each jurisdiction in which they operate, whereas their competitors who are doing business in reciprocating areas are not required to pay such fees and charges. This was the theme of a substantial for-hire carrier of agricultural implements based in Ontario <sup>3</sup> as well as a private carrier moving his own goods to the U.S. <sup>4</sup> Conversely, a U.S. carrier of steel <sup>5</sup> from an Ontario producer complained of the high cost of compliance with existing Ontario registration fees. The importers of fruits and vegetables <sup>6</sup> complained of the high cost of registration of vehicles entering Ontario.

The states of Michigan and Indiana sent delegations to outline the history of protracted negotiations with the Ontario Ministry of Transportation and Communications. Florida wishes to discuss an agreement....We detected an air of frustration in the submissions from these states....

The Committee will continue to explore the impact of the refusal of Ontario to become reciprocal with other jurisdictions. At this point in time, however, it is convinced that a change in attitude must be adopted by the Ministry of Transportation and Communications.

Regulation 418, Sections 10 and 11, made under The Highway Traffic

Act now reads as follows:

10. Subject to subsection 2, every commercial motor vehicle,
  - a) that is registered in a reciprocating province that grants exemption for commercial motor vehicles similar to the exemption granted by this section; and
  - b) that is owned or leased by a resident of the reciprocating province,is exempt from the provisions of sections 6 and 8 of The Act while the vehicle is being driven or operated in Ontario.  
O. Reg. 632/74, s. 8.

2. Subsection 1 does not apply to,

- a) commercial motor vehicles operating under any form of contract made in Ontario;
- b) motor buses operating on regular routes or schedules between a place in Ontario and a place in any other province; and
- c) commercial motor vehicles required to be licensed under The Public Commercial Vehicles Act, other than commercial motor vehicles used exclusively for the transportation of household goods or furniture or the transportation of natural products of the farm or the products of a dairy, creamery or cheese factory. R.R.O., 1970, Reg. 418, s. 10 (2).

11. Every commercial motor vehicle,

- a) that is registered in a reciprocating state of the United States of America that grants exemptions for commercial motor vehicles similar to the exemptions granted by this section; and
- b) that is owned or leased by a resident of the reciprocating state,

is exempt from the provisions of sections 6 and 8 of The Act while the vehicle is being driven or operated in Ontario if the vehicle is,

- c) a hearse or ambulance;
- d) a motor vehicle designed, equipped and used exclusively for living accommodation, commonly known as a motorized mobile home;
- e) a public vehicle operated in a scheduled service in Ontario within 10 miles of its point of entry on the international boundary line between Canada and the United States of America or operated on chartered trips originating outside Ontario;

- f) a commercial motor vehicle having a gross weight of 6,000 pounds or less, or a combination of a commercial motor vehicle and trailer or trailers where the trailer or trailers transmits to the highway a total weight of 6,000 pounds or less, and being operated in Ontario for the purpose of transporting goods owned by the owner or lessee of the commercial motor vehicle;
  - g) being operated in Ontario for the purpose of transporting from a farm natural products of a farm or livestock, or both, owned by the owner or lessee of the commercial motor vehicle;
  - h) being operated in Ontario for the purpose of transporting objects and materials used in the production of cultural presentations or exhibitions, including musical and ballet presentations and art exhibitions, if such presentations or exhibitions are not carried on solely for the purpose of financial gain, or
  - i) a commercial motor vehicle having a gross weight of 18,000 pounds or less or a combination of a commercial motor vehicle and trailer or trailers having a combined gross weight of 18,000 pounds or less and being operated in Ontario for the purpose of transporting used household goods owned by the owner or lessee of the commercial motor vehicle.
2. Clause g and h of subsection 1 do not apply to a commercial motor vehicle being operated in Ontario on a continuous trip originating at a point outside Ontario and destined to a point outside Ontario. O. Reg. 632/74, s. 9.

Where a trailer is being operated into, through or out of Ontario and displays a valid registration plate issued by another province or state or where the owner is in compliance with the provisions of the law of the province or state in which he resides in respect of registration of trailers, the trailer is exempt from the provisions of sections 6 and 8 of The Act. O. Reg. 632/74, s. 10.

2.3.1 Canadian Jurisdictions

As can be seen from Section 10, mirror licence plate reciprocity is now extended by Ontario to any jurisdiction in Canada which grants similar exemption from registration to Ontario vehicles (Sections 6 and 8 of The Act referred to deal with the requirements of registration and the purchase of licence plates).

This applies to private carriers and for-hire carriers of either household goods natural products of the farm or the products of a dairy creamery or cheese factory.

It is not extended to for-hire carriers of other commodities, (for example, steel or manufactured goods).

If reciprocity on licence plates is to be established between Ontario and another Canadian jurisdiction for all or for an expanded group of for-hire carriers, a special agreement would be required.

Authority is contained in Section 9 (1) of the Ministry of Transportation and Communications Act for the Minister to enter into agreements with the governments of other jurisdictions of Canada. No such authority is extended for agreements with the governments of U.S. jurisdictions.

Such an agreement has been struck with Quebec. That agreement however has raised many specific problems which are discussed in Chapter 3 of this Part. A copy of the agreement is attached as Appendix T.



2.3.2 United States' Jurisdictions

Section 11 of Regulation 418, previously quoted, provides mirror licence plate reciprocity to any jurisdiction in the United States which grants similar reciprocity to Ontario carriers. The offer is more restricted than the mirror reciprocity offered to Canadian jurisdictions. In respect to commercial vehicles, the offer applies almost totally to private carriers and only to those whose movement meets the detailed requirements of the quoted regulation. The only for-hire movement which could be included in a reciprocity agreement under the regulations is specified in clause (h) above.

If a licence plate reciprocity agreement is to be entered into by Ontario with any U.S. jurisdiction, then it must be the matter of a specific arrangement accompanied by amendment to the regulations.

Ontario has a reciprocity arrangement with North Carolina which has been in effect for a number of years covering certain for-hire movements. Some of those who advocated such an agreement were for-hire carriers from North Carolina. The Committee has been advised that no North Carolina trucker has applied to the Ontario Highway Transport Board and therefore, none has taken advantage of the agreement insofar as the purpose for which it was designed.

Ontario has no continuing agreements with other U.S. jurisdictions in respect of for-hire movements.

Some areas of concern with regard to reciprocal agreements on for-hire carriers were noted by an official of the Ministry of Transportation and Communications:

I am not indicating opposition to the principle of reciprocity. One must try to achieve all the equities possible in any agreement. Speaking generally, and especially from the trucker's point of view, there appears to be significant benefits.

There are some issues that are or would be peculiar to reciprocity between Ontario and U.S. jurisdictions. By way of background, many of you will be familiar with the practice in the past where an Ontario trucker wishing to obtain licence plate reciprocity in the U.S. would purchase plates in one U.S. jurisdiction that would entitle him to reciprocity in other States. This procedure was altered, where appropriate, in relation to cost, or varied in some cases to register the power unit in one State and the trailer in another. I am not sure whether this practice has been curtailed because of the refusal of many States to grant reciprocity unless the plate holder is a resident of the plating State. And so, it has been necessary for the Ontario operator to establish residence in the plating State with additional cost and inconvenience.

From the U.S. point of view, any State wishing reciprocity with Ontario could achieve it through direct negotiation; however, from Ontario's point of view there will be little point in achieving reciprocity; e.g. with the State of Texas, unless reciprocity could be achieved with the intervening States. The opportunity for Ontario to join a reciprocity compact or the International Registration Plan could provide some, if not total, relief from this problem. There could be implications for traffic volumes to south-western Ontario because of the attraction to U.S. truck owners to take the shorter corridor route. Because for-hire operations must have operating licences, the main problem (of congestion) if it did exist, would be with private carriage.<sup>7</sup>

#### 2.4 Further Considerations with Regard to Reciprocal Agreements

The Interim Report referred to a study which is being conducted in Canada on the broad principles of reciprocity. The Committee stated:

A study on this subject is now under way by a group of consultants and specialists from all regions of Canada. This study is sponsored by the Canadian Conference of Motor Transport Administrators, the Transportation Development Agency, and the Road and Transportation Association of Canada. This effort will be of great assistance in the future. The Committee's recommendations, however point the way to more immediate action.

The working party is being chaired by an official of the Ontario Ministry of Transportation and Communications and the report is due in the fall of 1977.

The study is designed in part to examine the impact of reciprocity on the trucking industry. Other goals are to determine the impact on provincial revenues, highway infrastructure and economy in general. The impact on the industry is to be done on the basis of the following nine issues:

1. Higher Costs. Do the existing reciprocity arrangements result in inequitable licensing costs? How significant is double taxation? What effects would various alternative schemes have on licensing costs and would they give rise to double taxation?
2. Operational and Administrative Constraints. To what extent do current or possible reciprocity schemes confront trucking firms with operational or administrative difficulties which reduce overall profitability? To assess the problems of operational or administrative constraints the following would have to be determined:
  - Whether an involved decision-making process is needed to decide on the number of vehicles to be registered to permit them to be used interprovincially.
  - Whether the fact that all vehicles are not doubly registered results in scheduling constraints. Such constraints may result in reduced fleet utilization, increased shipment handling or higher scheduling costs.

- Whether vehicles are delayed and additional cost incurred enroute when the right to travel is challenged.
  - Whether time is required to prepare paperwork to show that the firm has appropriate travel authorization.
  - Whether the reciprocity scheme imposes accounting system requirements which would not otherwise apply.
3. For-Hire Versus Private Carriage. Are for-hire carriers subjected to a different status than private insofar as their operating costs are affected? If so, to what extent and how would this affect the shipper choice between the choice of the for-hire and the private carriage mode?
  4. Industry Growth. Do higher costs and operational constraints (imposed by reciprocity schemes) inhibit growth in the for-hire trucking industry?
  5. Regional Growth. Do costs and operating constraints imposed on the trucking industry result in either poor or more costly service to shippers? To what extent does this restrict the growth of other industry in each region?
  6. Equity for Out-of-Province Carriers. Do out-of-province carriers incur registration costs which are inequitable relative to costs incurred by in-province carriers? Are such inequities significant?
  7. Effect of Licensing System. How do the various licensing systems (power unit, trailer, etc.) affect carriers under various reciprocity schemes?
  8. Place of Business. What are the implications of the existing and alternative reciprocity schemes with respect to establishing place of business for private carriers; and for common carriers in determining home province for vehicle registration?
  9. Enforcement. Do the existing or alternative schemes put law abiding firms at a disadvantage relative to firms that may operate illegally?

In assessing the preceding issues, it will be important to recognize existing differences between provinces and between firms. Without further study, the final classification for trucking firms cannot be established.



However, an illustrative classification would be the following:

- By province or region. The Maritime provinces may be grouped together since they currently have full reciprocity between themselves. The remaining provinces would be treated separately.
- By firm size - large, medium and small - based on revenues or number of vehicles.
- By type of firm - private, for-hire (common carrier or contract).
- Nature of the business - whether extensively inter-provincial, specialized vehicles (reefers, tankers) etc.

The study will assess the nine issues with respect to each classification.<sup>8</sup>

## 2.5 Michigan

Ontario's situation vis-a-vis Michigan in terms of the need for reciprocity is unique.

Regulation 418, Section 11 subsection 2 under The Highway Traffic Act provides, with respect to mirror reciprocity to U.S. jurisdictions, that:

- (2) Clauses g and h of subsection 1 do not apply to a commercial motor vehicle being operated in Ontario on a continuous trip originating at a point outside Ontario and destined to a point outside Ontario.

Regulation 699 under The Public Commercial Vehicles Act (RRO 1970) provides that:

- 1.(1) A Class L, operating licence permits any person authorized to carry goods in bond to operate,
  - (a) a public commercial vehicle while carrying goods in bond; or
  - (b) an unladen public commercial vehicle,

through Ontario between the states of Michigan and New York upon the route prescribed in the licence.

- (2) A Class L operating licence shall be in Form 1.
2. Every Class L licence shall specify the maximum number of trips that may be made daily by public commercial vehicles operated under the authority of the licence, and the maximum number so specified may vary upon different days of the week or months or periods of the year.
- 3.(1) No Class L licence shall be issued without the approval of the Ontario Highway Transport Board being first obtained as evidence by the Board's certificate to the Minister that the applicant has furnished proof satisfactory to the Board,
  - (a) that the applicant has been authorized by the Government of Canada or the appropriate department, branch or official thereof to carry goods in bond through Ontario; and
  - (b) that the Interstate Commerce Commission (a commission created by Act of the Congress of the United States of America) has approved of the applicant operating public commercial vehicles between areas in appropriate relationship to the proposed route through Ontario.
- (2) An application for a Class L licence shall be in Form 2.
- 4.(1) A fee of \$20.00 shall be paid to the Minister in respect of each trip made through Ontario under the authority of a Class L licence.
  - (2) The fee referred to in subsection 1 may be collected by the issue by the Minister of Transportation and Communications of Class L Trip Permits in Form 3 which shall be used only in respect of vehicles operated by the holders of Class L licenses.
  - (3) A Class L Trip Permit shall accompany the vehicle in respect of which it is issued during the trip, and shall be produced by the driver when demanded by a member of the Ontario Provincial Police Force or an officer of the Ministry designated by the Minister to assist in the enforcement of The Act.

5. No public commercial vehicle shall be operated under a Class L licence on a holiday.
6. The following provisions of The Public Commercial Vehicles Act and of Regulation 700 of Revised Regulations of Ontario, 1970 do not apply to holders of Class L licences or to public commercial vehicles operated under the authority of this Regulation:
  1. Subsection 3 of section 2, subsection 1 of section 5 and section 9 of The Public Commercial Vehicles Act.
  2. Subsections 2 and 3 of section 1, sections 2 to 12, sections 17 to 20, clause 1b of subsection 1 of section 21, subsection 2 of section 21, sections 23, 24 and 26 and the Forms of Regulation 700 of Revised Regulations of Ontario, 1970.

but in all other respects, The Public Commercial Vehicles Act and Regulation 700 of Revised Regulations of Ontario, 1970, apply thereto.

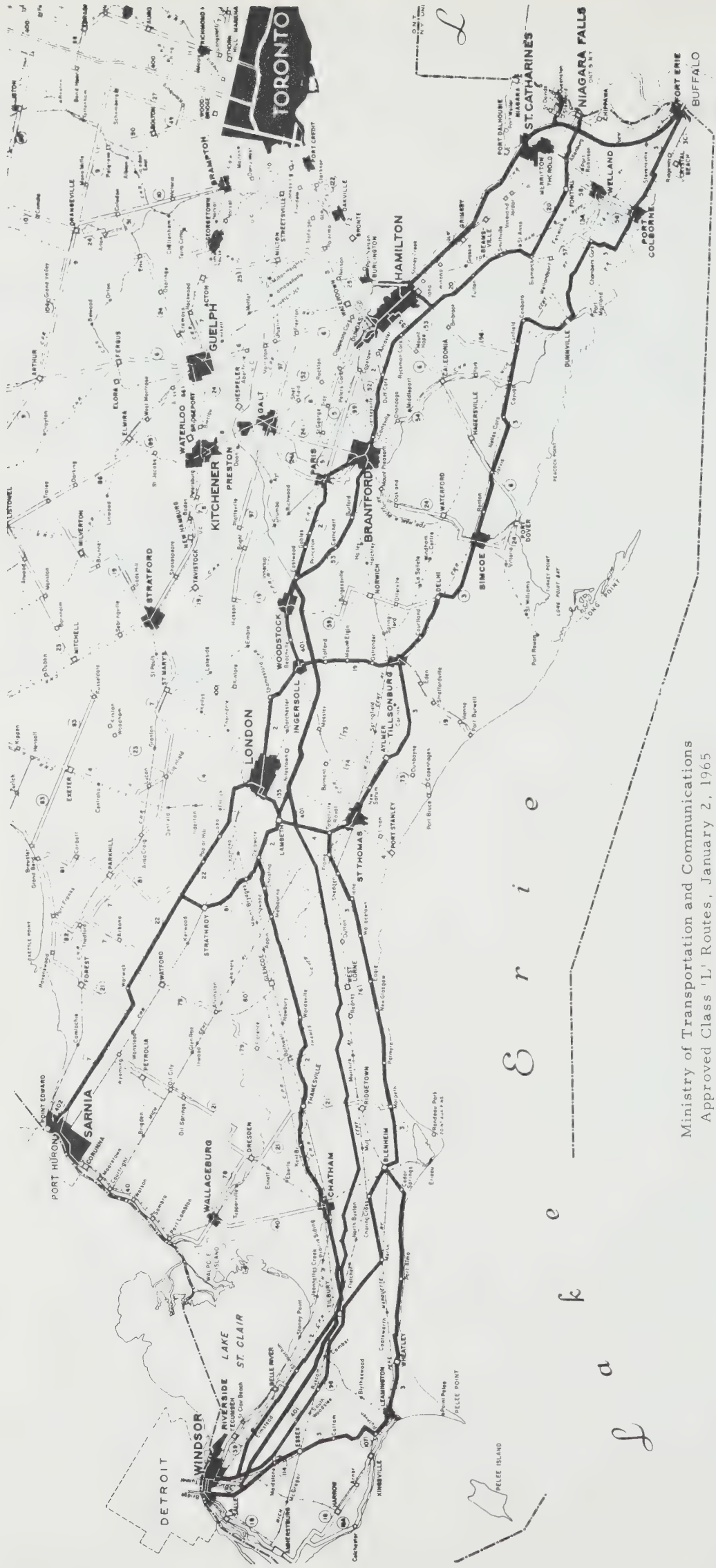
The routes which may be prescribed are shown on the attached figure.

There are currently 105 carriers licensed under these provisions. The total number of trips operated by those companies during the period April 1, 1975 to March 1, 1976 inclusive totalled 56,025. Of the 105 carriers authorized, four are authorized to transport wheeled vehicles only. The auto carriers operated 9,250 trips in the period noted.

In the same period, a total of \$1,120,500.00 was collected by the Province in \$20.00 Class L trip permit fees for all trips.

A history of movements and revenues follows at Table 1. <sup>9</sup>

FIGURE 1



Ministry of Transportation and Communications  
Approved Class 'L' Routes, January 2, 1965



FREIGHT IN BOND REVENUE

1952 - 1953	12,050 x 7.00	\$ 84,350.00	
1953 - 1954	21,175 x 7.00	148,225.00	
1954 - 1955	27,052 x 7.00	189,364.00	
1955 - 1956	37,538 x 7.00	262,766.00	
1956 - 1957	500 x 7.00	3,500.00)	
		)	\$ 346,660.00
	42,895 x 8.00	343,160.00)	
1957 - 1958	36,497 x 8.00	291,976.00)	
		)	\$ 382,003.00
	10,003 x 9.00	90,027.00	
1958 - 1959	50,449 x 9.00	454,041.00	
1959 - 1960	67,651 x 9.00	608,859.00	
1960 - 1961	59,891 x 9.00	539,019.00	
1961 - 1962	65,200 x 9.00	586,800.00	
1962 - 1963	68,172 x 9.00	613,548.00	
1963 - 1964	52,275 x 9.00	470,475.00	
1964 - 1965	58,700 x 9.00	528,300.00	
1965 - 1966	63,400 x 9.00	570,600.00	
1966 - 1967	57,725 x 9.00	519,525.00	
1967 - 1968	55,550 x 9.00	499,950.00	
1968 - 1969	64,875 x 9.00	583,875.00	
1969 - 1970	65,650 x 9.00	590,850.00	
1970 - 1971	61,500 x 9.00	553,500.00	
1971 - 1972	62,000 x 9.00	558,000.00	
1972 - 1973	6,050 x 9.00	54,450.00)	
		)	\$1,354,950.00
	65,025 x20.00	1,300,500.00)	
1973 - 1974	70,961 x20.00	1,419,220.00	
1974 - 1975	62,452 x20.00	1,249,040.00	
1975 - 1976	56,025 x20.00	1,120,500.00	
Single Trips	<u>1,301,261</u>	<u>\$14,234,420.00</u>	

The Committee stated in the Interim Report:

Article V of the General Agreement on Tariffs and Trade signed by Canada and the United States (among others) in 1947, provides that "there shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on....the place or origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport...

It is the opinion of this Committee that by virtue of the above Treaty, Ontario is obliged to extend to the U.S. carriers (from Michigan) using the corridor north of Lake Erie the same fees and charges assessed against Ontario carriers in Ontario and to apply the same operating rules.

As previously indicated, Michigan sent representatives to testify at the Committee's hearings in Windsor. The Michigan brief stated in part:

In approximately 1956, representatives of the Michigan trucking industry negotiated with the Province of Ontario following which the Province authorized a trip permit for "for-hire" carriers travelling between Detroit and Port Huron to Buffalo by way of the Niagara peninsula, commonly referred to as the "corridor". To the best of our recollection, this extension of reciprocity was privately negotiated between the carriers and the Ontario Government without the involvement of the Michigan Highway Reciprocity Board. There is no formal agreement between the two jurisdictions in any event. The fee for this permit, allowing for one way movement across the Peninsula, was \$7.50. Subsequent to 1956, the fee has increased by varying amounts and is presently available at a cost of \$20.00. This permit is valid for a single movement, one-way. A round trip requires two permits.

Some Michigan carriers, however, have found that it is possible to purchase an Ontario registration plate for the purpose of avoiding the trip permit fee on return trips (empty) across the corridor...

At the present time certain imparities in fees and licensing exist between Ontario and Michigan domiciled for-hire carriers which operate into or between the two jurisdictions.

For example:

1. A Michigan domiciled for-hire carrier, crossing the Province of Ontario needs an L licence for the privilege of using the highways. The Ontario carrier needs no operating authority from the State of Michigan to travel across the State.
2. A Michigan L licence holder must pay \$20.00 per trip to cross the Province of Ontario. The Canadian carrier must pay \$20.00 for a Ten-Day permit to operate on the highways of Michigan.
3. At the present time a Michigan carrier cannot operate between Michigan and New York State by purchasing an Ontario licence plate and a Public Commercial Vehicle plate, however, an Ontario carrier can buy a Michigan licence plate and a Public Service Commission plate and operate across Michigan. The Michigan carrier operating across Ontario must obtain an L licence and pay \$20.00 per trip. In addition, the Ontario carrier has the option of licensing his vehicle in Michigan or buying our ten-day permit at a cost of \$20.00.

Because of the amount of commercial traffic between Ontario and Michigan, Michigan has attempted to improve reciprocal relations with Ontario for the past several years. The development of the St. Lawrence Seaway and the increase of commerce between the two jurisdictions has prompted the attempt to maximize our efforts. It is our understanding that until a few years ago Ontario did not have reciprocity with any of the Provinces of Canada or with any of the states of the United States. Some improvement has occurred, however, with Ontario having entered some form of reciprocal agreement with three or more of the other provinces. We are unaware of any improvement with the States...

As a result of meeting with the Minister of Transportation and Communications in 1974, it was agreed that a survey of truck traffic would be undertaken jointly by the two jurisdictions at the various points of entry.

The Michigan survey was conducted in April, 1974, the Ontario survey at approximately the same time. Information relating to the vehicle type, fuel used, class of operation, jurisdiction in which licensed, gross vehicle weight, commodity carried, trip origin and destination and number of trips per month was gathered. The results of these surveys were compared and the results forwarded to the Minister of Transportation in August, 1975. The results

indicate a greater percentage of commercial vehicles with Ontario registration plates operating between the two jurisdictions at the various locations. From this we deduce that it would be to the advantage of Ontario carriers if the jurisdictions were to grant full vehicle registration reciprocity.

The transmittal of the truck survey results to Ontario in August of 1975 was accompanied by a proposed bilateral reciprocity agreement which was designed to grant reciprocity to commercial vehicles properly licensed in either jurisdiction. At the time of transmittal the Michigan Highway Reciprocity Board requested a reaction from the Province of Ontario prior to October 7, 1975. Finally, in June of 1976, when further negotiations appeared fruitless, there having been no reaction to the proposed bilateral agreement, the Michigan Highway Reciprocity Board approved the issuance of a "single trip" permit to Ontario private and common carriers to replace the previously issued ten-day trip permit. The cost remains \$20.00. The new permit authorizes a commercial vehicle registered in Ontario a single trip into Michigan or a trip through Michigan and return if the destination is outside Michigan. The use of this permit has been delayed, originally scheduled for July 5, 1976, and now scheduled for September 1, 1976.

The Committee notes that Michigan did implement this provision in September. It applies only to carriers from Ontario.

The Michigan brief went on to say that,

The "single trip" permit is admittedly retaliatory in nature. As previously indicated, Michigan is desirous of attaining full reciprocity with the Province of Ontario. Failing this, it is the intention of the Michigan Highway Reciprocity Board to follow the mandate of the Legislature in establishing the Board, that is, to grant "privileges and exemptions substantially like and equal to those granted by such jurisdictions to owners or operators of vehicles properly registered in this state"....<sup>10</sup>

The Committee commented in the Interim Report on the Class L process, as follows:

It is the opinion of this Committee that by virtue of the G.A.T.T., Ontario is obliged to extend to the U.S. carriers using the corridor north of Lake Erie the same fees and charges assessed against Ontario carriers in Ontario, and to apply the same



operating rules. The \$20.00 fee should be abandoned both in Ontario and Michigan. Instead, negotiations should be instituted by both jurisdictions leading to membership in the International Registration Plan or in some other equitable scheme. We shall review this recommendation in our final report in the light of any action that may have taken place in the meantime.

No action has been taken.

The entire process of Class L permits as described by the regulations is questionable. A freight-in-bond movement which originates and ends outside Ontario appears to the Committee to be a pure form of extraprovincial undertaking. The basis for different processes and law between Class L movements and Class X authorities is not clear from the provisions of The Motor Vehicle Transport Act.

## 2.6 Florida

Florida has a population of 8 1/2 million, roughly equal to that of Ontario. State officials have made three visits to Ontario within the last 12 years to seek reciprocity on registration fees - with no results. Recently Florida has concluded reciprocal agreements with the provinces of Quebec and Manitoba. There has been a reciprocity arrangement of long standing between Alberta and Florida. Agreements also exist between the Maritime provinces and Florida.

Florida state officials had taken enough interest in the need for reciprocity with Ontario to send a delegation to Toronto to testify before the Committee.

With this background, the Committee accepted an invitation from the Chairman of the Public Service Commission of Florida to visit the State capital. The Committee was aware that rail transportation of agricultural commodities to and from U.S. markets had dwindled. Information had been received from the Florida Public Service Commission testifying in Toronto that in the period September 1, 1974 to July 31, 1975 a total of 992 truckloads of grapefruit and 595 truckloads of oranges had been delivered to Toronto. In the same period Ottawa had received 185 truckloads of grapefruit and 58 truckloads of oranges.

At its sittings in Toronto, the Committee was furnished with the names of 63 carriers resident in Ontario who had registered in Florida as carriers of agricultural commodities which were exempt from Interstate Commerce Commission regulations. In addition, there were 36 Ontario carriers who had registered with the State of Florida who did come under the control of the Interstate Commerce Commission. An analysis of the residence of the Ontario carriers registered in Florida indicates residence addresses over a wide range of southern Ontario including:

Athens	Belmont	Brockville	Burlington
Cambridge	Chatham	Comber	Cornwall
Downsview	Dunnville	Embro	Essen
Foxboro	Grande Pointe	Guelph/Hagersville	Hamilton
Harrow	Jasper	Kinburn	Kingsville
Kitchener	Leamington	Lindsay	London
Milton	Mississauga	Morewood	Morrisburg
Napanee	Niagara Falls	North Bay	Oak Ridges
Orillia	Ottawa	Owen Sound	Paris
Parkhill	Peterborough	Port Credit	Prescott
Ruthven	St. Catharines	Sarnia	Seaforth
Scarborough	Smiths Falls	Strathroy	Thornhill
Thorold	Toronto	Tupperville	Wainfleet
Windsor	Woodlee	Woodstock	

At the same time, there are only two carriers from Florida licensed by the Ontario Highway Transport Board. No record is available of the number of carriers of farm products from Florida farms who come to Ontario.

The evidence adduced at the Florida sittings can be divided into two categories:

1. Agricultural or "exempt" (I.C.C.) commodities where the Florida carriers complained of problems in entering Ontario which may be summarized as:

- (a) excessive registration fees;

- (b) interlining trailers at the international border,

- (i) delay in pickup of northbound trailers,
    - (ii) delay in returning empty trailers,
    - (iii) unauthorized use of "borrowed" trailers by Ontario carriers,
    - (iv) rough handling of fragile loads such as watermelons,
    - (v) return of interlined trailers containing garbage and damaged goods not related to the northbound movement.

- (c) Adverse settlement of claims by Ontario consignees for damages and delay which settlements are made in the absence of, but at the expense of, the originating carrier.

2. Processed goods such as citrus juice or frozen foods carried by Florida carriers entering Ontario. The high cost of registration was graphically presented to the Committee. Comparisons were drawn between an annual (four quarters) registration fee for commercial vehicles in Ontario of \$1,376.50 as against,

\$40.00 in New Brunswick  
\$100.00 in Nova Scotia  
\$127.00 per tractor in Quebec and  
\$127.00 per trailer in Quebec

(Committee's Note: It appears a vehicle with a registered gross weight of 97,501 to 98,000 pounds was used for the comparison, although the quoted registration fee is not exactly as prescribed in the regulations.)

As a result the U.S. carriers of frozen foods minimize the use of their vehicles in Ontario, causing delays in delivery. Based on past experience they no longer forward their trailers to destinations behind Ontario tractors owned by residents of Ontario.

Florida, on the other hand, does not require full registration fees from any of the Ontario carriers, whether they carry exempt or other commodities or passengers. In bus transportation, Ontario vehicles carry thousands of passengers to Florida with insignificant expense for registration in Florida and for Public Vehicle plates in Ontario.

Passenger traffic from Ontario to Florida has reached great proportions. With earlier retirement, pensions, severance pay and the innate desire to travel, the trend towards southern vacations has led to a substantial movement of retirees and others to the Atlantic and Gulf coasts. The Governor of Florida expressed to the Committee his strong support of this traffic. The State officials, while endorsing this support, requested consideration of a reverse movement but of goods rather than people.

The evidence presented to the Committee in Florida came from,

1. National Agricultural Transportation League
2. Growers Marketing Service Inc.
3. A. Duda & Sons Cooperative Association
4. Waldie Bros.
5. Refrigerated Transport Inc.
6. Red Wing Express Inc.
7. Individual Brokers of Transportation and Owner-Operators.

At the State capital, the Committee had discussions with officials of the Public Service Commission, the Department of Agriculture and the Department of Commerce. An observer was present from the Motor Vehicle section of the Government of the State of Georgia. At the meetings, the Committee heard the willingness of the State officials to negotiate with Ontario and their disappointment in the lack of progress to date.



The State of Georgia reported to the Committee that it had succeeded in obtaining reciprocity with Quebec only after detaining Quebec vehicles for non-payment of registration fees. These fees are high for non-reciprocity jurisdictions. It was indicated to the Committee that similar action may be recommended for Ontario vehicles.

Apart from the above, Ontario has an interest in traversing both Georgia and Florida in the carriage of merchandise to and from points in the Caribbean. Ontario is a source of considerable manufactured items and meat shipped to the Bahamas. Distillery products move in the reverse direction. Banana boats go to Florida ports where the loads are transferred to Ontario-owned vehicles.

## 2.7 The International Registration Plan

Many of those who testified before the Committee supported licence plate reciprocity agreements between Ontario and other jurisdictions. More specifically, many recommended that Ontario explore subscription to the International Registration Plan (I.R.P.).

The I.R.P. is:

A registration reciprocity compact among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.

The unique feature of this plan is that even though license fees are paid to the various jurisdictions in which fleet vehicles are operated, only one (1) license plate and one (1) cab card is issued for each fleet vehicle when registered under the Plan. A fleet vehicle is known as an apportionable vehicle and such vehicle, so far as registration is concerned, may be operated both interstate and intrastate.

The International Registration Plan is a product of the American Association of Motor Vehicle Administrators and thus, is recommended for adoption by all jurisdictions.

The purposes and principle of the plan are:

To promote and encourage the fullest possible use of the highway system by authorizing the proportional registration of fleets of vehicles, and the recognition of vehicles proportionally registered in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions.

It is the purpose of this agreement to implement the concept of one registration plate for one vehicle.

It is the purpose of this agreement to grant exemptions from payment of certain fees when such grants are reciprocal.

It is the purpose of this agreement to grant reciprocity to proportionally registered fleets of vehicles, and to provide for the continuance of reciprocity granted to those vehicles that are not eligible for proportional registration under the terms of this agreement.<sup>11</sup>

At the time of writing, almost half of the State jurisdictions and Alberta have joined the plan.

## 2.8 Europe

The Committee indicated its intention to explore the existing methods of expediting goods movements between jurisdictions in Europe. Some measure of reciprocity exists with regard to registration plates, through the purchase and display of a "T.I.R." plate, which does facilitate border crossings and clearance at inland points.

However, there exist significant differences between jurisdictions as to weight and dimensional laws and tax structure. These differences cause real economic impediments to the free movement of trucks between jurisdictions. These differences are the cause of concern to private and for-hire carriers, the Commission of the European Economic Community. The EEC has been actively trying to achieve a harmonization of law between member countries, but has been unsuccessful.

The Commission stated:

The common transport policy has not made striking progress in recent years. The practice of adopting at intervals partial and limited measures extracted from the Commission's proposals slows its development. The Community needs, on the contrary, to work out an overall approach enabling it to respond, in the medium and long terms, to the requirements of a society and an economy which are in the midst of profound change....

To the extent to which the intervention of the public authorities in transport is confined to the national or bi-lateral level, there is a risk of increasing the "compartmentalization" of national transport policies, a compartmentalization which is still with us despite fifteen years of efforts to implement a common transport policy.

Intervention by the public authorities in transport is clearly necessary. However, the divergences between the various interventions of the authorities at the national level and the related rigidity of national transport arrangements led the authors of the European Economic Community Treaty in 1957 to provide for a common transport policy for the common market. But the objectives which the council laid down between 1965 and 1967 by a series of key decisions have only been achieved to a very partial extent.

It is enough to recall the situation which exists in international road transport between Member States. Depending on the journey in question, transport for-hire or reward is either free, or subject to authorization, or subject to permits granted within a quota system. The nature of the authorizations varies from one

type of journey to another (period of validity, freedom to pick up a return load, etc.). The basis for international transit within the Community varies from state to state. Own-account transport is sometimes free, sometimes subject to quotas. The arrangements for combined transport are inadequately developed and are not harmonized as between Member States. It is important to emphasize that by virtue of Article 75 of the Treaty, common rules applying to international transport, and the conditions under which non-resident transport undertakings may be allowed to engage in national transport activities within a Member State, should have been drawn up during the transitional period. <sup>12</sup>

These profound differences, when considered with the existence of bilateral and EEC quotas on truck movements, mean that the movement of goods between jurisdictions is severely impeded.

## 2.9 Conclusions

Reciprocity with regard to the movement of goods by highway to and from other jurisdictions is a desirable goal. The Committee recognizes the complexities of the subject.

Reciprocity implies an equalization, an allocation or a waiver of taxes, whether it be on sales tax, fuel tax or licence plates. Achievement of the objective set out by the Committee will require uniformity of commercial vehicle traffic laws between jurisdictions. It will require a recognition of differences in laws relating to operating authority. It may be that if a goal of true free movement of goods is to be achieved, the licensing actions of the Ontario Highway Transport Board in respect of non-resident public commercial vehicle operations will have to reflect a commitment to this broader principle.



On the other hand, it is through operating licensing authority that a jurisdiction can, if need be, control the number of public commercial vehicle operators permitted to operate in Ontario. This authority helps to answer those who feel licence plate reciprocity agreements would lead to an influx of carriers from reciprocating jurisdictions.

There is a contradiction in the position of the Ministry of Transportation and Communications on this point. The Committee was informed by the Ministry that a licence plate reciprocity agreement with Florida might solve the problems now existing for only a very small percentage (5 - 10%) of the Florida vehicles or operators wishing to travel freely into Ontario. The basis for this concern was that the remaining 90 - 95% would be for-hire carriers who, regardless of whatever licence plate reciprocity agreements existed, would not be exempt from the current requirements of The Public Commercial Vehicles Act - they would not be private carriers and they would be carrying products other than those of and from a farm or forest. Therefore, they would need to obtain Class X authority to operate into Ontario.

If this is true, then the suggestion that a large influx of U.S. carriers would result from licence plate reciprocity cannot be true. The quantity can, where desirable, be controlled to a large degree through the granting of operating authorities. The experience of the North Carolina agreement and the vehicle survey done by Michigan and Ontario, support this conclusion.

The matter of revenue or revenue loss is important but should not stand in the way of negotiations by Ontario on licence plate reciprocity. One cannot consider licence plate revenues alone in this regard. Other taxes must be examined. Negotiations must take into account taxes applied in the other jurisdictions. Furthermore, Ontario's taxation policy must be made to apply in a like manner to truckers from other jurisdictions.

From the point of view of the economist, consideration may be given to reciprocity as one means of encouraging exports. For instance, Florida sells Ontario smelts - which require refrigerated trailers for protection in transit. Ontario now exports extensive quantities of peat moss used by U.S. farmers. Building materials and Ontario furniture are also exported to the eastern and southern states. Paper and paper products, hay, turnips and many other commodities are being sold and can be further developed for sale in the United States.

Readers are reminded of the comparatively liberal attitude of Ontario in the past. While many other jurisdictions impose sales, fuel and third structure taxes on Ontario truckers, Ontario, while it has the authority, does not always assess either gasoline or fuel tax against non-resident carriers.

The Ministry of Revenue stated to the Committee:

Gasoline Tax

It has been the practice in the past for all provinces to tax gasoline at the time and at the place of delivery to the consumer. This has meant that there had arisen no interprovincial problems on the use of gasoline. In 1973, however, the Province of Quebec introduced new legislation and gasoline became taxable on the basis of use as well as at the time and place of delivery. This action by Quebec affected a number of small private truckers who used gasoline in the Province but had purchased it elsewhere.

Fuel Tax

Although using different methods, all provinces charge tax on the fuel used on highways on the basis of receipt or use. Manitoba charges tax on the basis of use or purchase within the Province, whichever is the greater; Quebec charges tax on the basis of place of purchase or use but allows a credit, however, is not refundable and expires if not used. The trucker must try to adjust his fuelling practices in order to obtain any benefit from the credit.

Ontario, in the case of registrants, refunds the tax paid on fuel used outside the Province. This enables the trucker to pay the tax to the other provinces when due.

During 1975, Ontario, by order-in-council, forgave \$2,023,722 of tax rightfully due to this Province on fuel purchased outside Ontario but used within Ontario. To have collected the tax would have meant that double tax would have had to be paid by the truckers on fuel purchased in Quebec or Manitoba and used in Ontario. Tax was forgiven because the double taxation was an excessive burden on the trucking industry. The trucking industry was advised that as from January 1, 1976, the laws of Ontario with regard to this tax would be applied, and there would be no similar relief. Ontario would demand the tax rightfully due to it but would continue to refund tax on fuel purchased in Ontario but used elsewhere.

## Sales Tax

The Interprovincial Sales Tax Agreement does not include allowance for U.S. miles and pressures have been brought to bear to include such an allowance. Principally because of this, an interprovincial committee is currently reviewing the feasibility of the concept. Provision for U.S. mileage was not included in the 1968 draft at the insistence of Manitoba and Saskatchewan.

Under the arrangement no provision is made for U.S. Common Carriers and vehicles used in Canada by them are technically subject to tax in full in each province in which they are used. Tax is not currently being collected on these vehicles in Ontario, nor is it believed to be collected in other provinces. Some thought has been given by the provinces to applying tax on a formula basis.

Since private carriers are not included in the Interprovincial Arrangement they pay tax in full in their province of residence and, in addition, are technically liable for tax in full in any other province in which their vehicles are registered. In order to avoid the potential of double taxation several provinces have formulated an agreement recognizing each others primary right to taxation and waiving collection of the additional tax.

Problems have been encountered by Ontario private carriers in both Ohio and Pennsylvania. Both these States are attempting to tax unless a reciprocal relief is granted to their private carriers operating in Ontario. Reciprocal relief is offered by Ontario in a manner similar to the interprovincial agreements dealing with private carriers.



U.S. private carriers are also not covered by the Interprovincial Arrangement and are liable for tax in full in Ontario and most other provinces. Although the taxation of non-resident carriers is an issue which appears on the agenda of all inter-jurisdictional discussions, resolution of the problem is undoubtedly a long way off owing to the number of jurisdictions involved (58 continental provinces and states). <sup>13</sup>

On December 16, 1976, the Minister of Transportation and Communications made a statement to the Legislature based on the Committee's Interim Report. That statement was encouraging to members of the Committee and members of the public involved in transportation. The statement made it clear that Ontario will give a higher priority to truck transportation policy in general, and to reciprocity more specifically. The Minister stated in part:

I was impressed by the concerns raised by the House Members during debate on that Report.

To begin with, it was of great interest to me, personally, when the Committee confirmed the need for the regulating process in the trucking industry.

While it is to be realized that the Committee's final report isn't due until February 28th of next year, my Ministry will begin to act on the interim recommendations now.

Therefore, in light of the Committee's interim recommendations - and at the same time keeping in mind the Committee's final report which will be tabled in late February - it is clear to me that there is a real need for my Ministry to re-examine its policies and role in highway transportation regulation and its relationship with the Ontario Highway Transport Board.

Traditionally, the Government's legislation and planning in this area has been based on "necessity and needs".

And it is interesting to note that the Members of the All-Party Committee spelled this formula out in part five under the heading of "Reciprocity" in their summary of recommendations.

The ultimate aim of the Government of Ontario shall be the free flow of goods in private as well as for-hire vehicles to and from points outside of Ontario with a minimum of interference by ways of fees, charges, taxes, reports, records and documentation.

I heartily agree, and this admirable goal has been our aim with respect to intra-provincial trucking.

If the flow of goods between U.S. and Canadian jurisdictions is to be made easier and more efficient, a comprehensive and responsible approach must be quickly taken by the Ontario Government. There are two areas in which an immediate initiative must be taken. Those are licence plate reciprocity and uniformity of traffic laws. The Committee is aware of the effective interprovincial and international reciprocity in relation to passenger cars, station wagons and buses (with or without express parcels).

#### 2.10 Recommendations

The Committee recommends that:

1. A branch, division or bureau be established at once within the Ministry of Transportation and Communications to study all aspects of reciprocity and extra-provincial commercial transport.
2. The office be directed to report within six months with a suggested plan for future action.
3. The Ministry of Transportation and Communications notify the Canadian Conference of Motor Transport Administrators and other interested parties of the creation of the new office and invite discussion.
4. Precautions be taken with a view to avoiding congestion on Ontario highways by non-resident carriers of goods, either by provisions for an annual review of volumes and traffic or by insertion of suitable clauses in each reciprocity agreement.
5. The ultimate aim of the Government of Ontario be the efficient and authorized flow of goods in private as well as for-hire vehicles to and from points outside Ontario with a minimum of interference by way of fees, charges, taxes, reports, records and documentation.

6. The Ministry of Transportation and Communications take a leading part amongst the provinces of Canada to promote reciprocity in all its aspects including discussions on the rationalization of differences in operating authority and traffic laws.
7. A joint initiative be taken by the Ministry of Transportation and Communications with the Ministry of Revenue to establish reciprocal arrangements in fuel, gasoline and sales tax with other North American jurisdictions.
8. The Ministry of Transportation and Communications Act and The Highway Traffic Act be amended to the effect that the Minister of Transportation and Communications has the authority to enter into licence plate reciprocity agreements with the governments of other jurisdictions in Canada or the United States.
9. Licence plate reciprocity for Canadian provinces as contained and offered in Regulation 418, Section 10 under The Highway Traffic Act be extended to include all for-hire and private motor carriers.
10. All non-resident carriers, exempt in Ontario from the provisions of The Public Commercial Vehicles Act be required to register in Ontario as recommended in Part II, Chapter 7.
11. The Public Commercial Vehicles Act, Section 12 (2) be amended as required to the effect that, where a person required to hold an operating licence under this Act is a resident of a jurisdiction with which Ontario has a licence plate reciprocity agreement, the holder of the operating licence need not be the registered owner of the vehicle under The Highway Traffic Act to be entitled to a public commercial vehicle licence.

## CHAPTER 2 - PART V

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2. R.H. Humphries, Page 3.
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10. Michigan Brief to the Committee, Windsor, August 18, 1976.
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12. European Economic Community.
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### FIGURES & TABLES

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## CHAPTER 3

### QUEBEC

#### 3.1 Introduction

The problems created for Ontario truckers and shippers in moving goods to and from Quebec were vividly described to the Committee by many witnesses. The problems which exist arise from the totally different attitudes of the two Provinces in respect to tax law, transportation law and their enforcement.

The Committee's main interest in this case is the efficient movement of goods to and from Quebec. An equally important and possibly prerequisite interest is in seeing that the movements which do occur take place in a market which is just, reasonable and equal. The Committee finds the current situation totally unacceptable. Ontario and Quebec carriers do not compete in a balanced market. The Quebec based trucker operating into Ontario has significant advantages over the Ontario trucker wishing to operate into Quebec.

There is substantial movement of traffic to and from Quebec every business day. Eastern Ontario depends on marketing its agricultural produce in the urban areas in and around Montreal. Quebec manufacturers of building products, car parts and processed foods depend on Ontario

sales. The highway connections between the two provinces have been provided at a cost of many millions of dollars. These and many other reasons justify meaningful economic and regulatory cooperation in terms of transportation.

### 3.2 Licence Plates - The 1975 Reciprocity Agreement

A reciprocal agreement in relation to licence plates existed between Ontario and Quebec for many years. Changes to Quebec law some years ago necessitated a revamping of the formal agreement between the two provinces. A new agreement was negotiated and concurred in by the two governments in the fall of 1975. A copy of that agreement is attached as Appendix T.

One discussion of this agreement stated:

Although the agreement has a much broader application to private carriage than to for-hire carriage, its enforcement has raised some problems of general concern. By way of background, reciprocity for private carriage and for for-hire movement of used household goods has been in effect for many years based on the principle of residence of the operator. With the change of emphasis by the Province of Quebec from residence to place of business it was necessary to re-negotiate the agreement to again bring into balance the privileges enjoyed by truckers from both Provinces operating between the Provinces.

Under the new agreement, licence plate reciprocity is available to a person who has a place of business in one Province but not in both Provinces, while transporting his own goods or transporting for-hire used household goods, produce of the farm, livestock, dairy products, pulpwood and similar wood products. This, in effect, is more restrictive than the original agreement since the place of business in both Provinces disentitles the operator from

reciprocity, whereas under the residence rule a carrier could be resident in one Province and have a place of business in both. The new agreement has a further limiting element in that Quebec chose not to include leased vehicles.

The Quebec position was necessary on account of the leasing licensing law in effect in that Province. The Ontario position in this respect is that the agreement grants reciprocity to private carriage whether it is carried on by use of owned or leased vehicles. Where leases are long term, change in registration to lessee may be possible to become entitled to reciprocity.

Enforcement procedures vary in the two Provinces, which often causes misunderstanding on the part of the trucker involved. Under Ontario law the trucker violating the registration laws would be charged with the offence and allowed to proceed. In Quebec, similar to many U.S. jurisdictions, the law provides a power of arrest until certain conditions are met; e.g. producing a bond subject to seizure for non-appearance in court. As a result, equal treatment under the reciprocity agreement by way of enforcement does not exist. Equity in that respect cannot be acquired through the agreement but only in the statutes on administration of justice.

Ontario Class H carriers are entitled to reciprocity only in respect to transportation of used household goods and household goods carriers holding an Ontario X authority are entitled to reciprocity only in respect to the used household goods part thereof. <sup>1</sup>

It is clear that the agreement which has been struck on licence plates is not broad enough to cover all the for-hire movements which must occur between the two provinces. It is also clear that even total reciprocity agreement on licence plates if one were possible, would not solve all the existing problems.

### 3.3 Other Factors

Recent experiences within the dump truck industry point to the breadth of the impediments to free traffic flow which exist. Problems

are most acute, although not limited to, dump vehicle operations between Ottawa and Hull.

There, an informal agreement existed for years between the Ottawa and Hull city police forces which allowed dump vehicles to operate freely between the two cities.<sup>2</sup> With the aforementioned agreement on reciprocity and changes in enforcement responsibilities within Quebec, this situation was brought to an abrupt end.

An association of dump vehicle operators outlined the situation which ensued:

Although the problem applies to all segments of the (truck) Transportation industry, we speak solely of the Dump Truck problem.

Even if Ontario Truckers purchased Quebec plates, it would solve very little, because they have to obtain a V.E. plate (contractor's licence under Regulation 12) to be able to haul outside the City of Hull. This takes up to two (2) years to be heard before the Quebec Transport Commission. There are no temporary licenses in Quebec...

Let us state, we are not looking for reprisal, we are looking for equal treatment.

On August 9th, all Ottawa Truckers were stopped from hauling into the City of Hull, to a Federal Building and other projects. They were stopped by Quebec Ministry of Transport Inspectors.

Previously, both Ontario and Quebec Truckers were hauling into the projects. Now, only Quebec Truckers come over here (to Ontario) pick up materials, and haul them back. Enforcement has been confused and sporadic.

Because of jurisdictional problems, the Ministry of Transportation and Communication officials have been unable to do much about it.

In Ottawa proper, we have had many Quebec Truckers working within the City, with no Ontario plates; while local Ontario Dump Truckers, who are Ontario taxpayers, are sitting idle.

In no way could this happen in Quebec.<sup>3</sup>



Meetings were subsequently held between transportation officials of the Ontario and Quebec Governments. The Ottawa dump truckers were encouraged to apply for operating authority in Quebec. Some applicants did receive operating authority reasonably quickly from the Quebec Transport Commission. Those that did held a licence under Regulation 12 under The Transport Act of Quebec, authorizing bulk trucking movements. In addition to this licence,

They must purchase a year's Quebec commercial plate, plus pay sales tax on the value on the truck, plus make arrangements on fuel tax.

Conversely, Quebec dump truckers can come into Ontario by purchasing quarterly plates and sign a sales tax exemption (which M.T.C. has to accept) and not worry about fuel tax and they do not bother about authority from O.H.T.B.

Those (Ontario Truckers) presently holding all necessary licenses (at some considerable expense) from the Quebec Transport Commission and O.H.T.B. are very much concerned over the effect of this. Also, it would appear that local M.T.C. people are under instructions not to lay any charges on operators in the Ottawa-Hull area if they do not hold proper authority (if a Quebec trucker comes into Ottawa via Highway 417, having crossed at a point elsewhere, he might be charged but if he crosses at the Ottawa-Hull bridge no charge is laid). Is this what reciprocity is all about?

The sales tax angle is very unfair to Ontario truckers and residents, having to pay dual sales tax. I realize this is not within the purview of the Ministry of Transportation and Communications but its issuing offices act as collectors.

We have tried for many years in the past to pursue this point, with the sales tax people, but it has only resulted in frustration and no action.

The purpose of this letter is to make you aware of the situation and to let you know how little the Quebec Transport Department has really conceded to the Ontario dump truckers. <sup>4</sup>

These comments go some way towards indicating the problems which exist for truck movements between the two provinces.

It is clear that the current licence plate reciprocity agreement does not solve the majority of difficulties faced by Ontario truckers who wish to operate into Quebec.

An extension of that agreement to other types for for-hire transportation movements, while extremely desirable, would not solve all of the existing problems.

The discrepancies in enforcement create disparities in licensing requirements which are unacceptable. The law in Quebec is enforced by the Province, even at the border within Hull. Local police are no longer the enforcing agency. In Ontario, the Ottawa police have enforcement responsibility at the border. Provincial officers will not enforce the provisions of The Public Commercial Vehicles Act or The Motor Vehicle Transport Act within Ottawa. A Quebec trucker operating into Ottawa should by law hold a Class X authority in Ontario in addition to licences required in Quebec. Similarly, an Ontario carrier would require authority from Ontario and complementary authority from Quebec to operate across the provincial boundary into Hull. The difference appears to be that the law is strictly enforced in Quebec but not in Ontario, particularly where the crossing occurs into an Ontario municipality. The reason for this appears to be that the province has not assumed any jurisdiction to enforce within a municipality.

Alternatively, the Ottawa police have been neither encouraged nor directed to carry out stringent operating authority enforcement.

Even if there existed a total licence plate reciprocity agreement and equal enforcement, the Ontario trucker would be at a disadvantage caused by:

1. the Quebec carrier's ability to purchase quarterly plates in Ontario, thus plating his vehicle only during peak periods;
2. the Quebec requirement that Ontario carriers purchase full year plates;
3. the preference given by Quebec construction contracts to the hiring of Quebec truckers, when similar provisions do not apply in Ontario;
4. the difficulty of obtaining operating authority in Quebec compared with Ontario particularly for dump vehicle operators;
5. the strong stance taken by Quebec on fuel and sales tax against Ontario truckers where similar action is not taken by Ontario with regard to non-resident truckers.

The last circumstance is very important because the Quebec Government has ordered collection of thousands of dollars in back fuel taxes from some Ontario carriers.

The problems which exist for Ontario-Quebec trucking movements apply to the entire trucking industry. The issues have been expressed most forcefully by those in the dump vehicle industry. More disparities for this industry will occur in the future. As mentioned, the Greater Ottawa Truckers Association is being investigated by federal officials under The Combines Investigation Act. If Quebec truckers can jointly set rates and bid contracts in Ontario and Ontario truckers cannot do so either in Ontario or Quebec, the Ontario industry will be in a poorer competitive position than their Quebec counterparts.

### 3.4 Conclusions

The environment within which Ontario-Quebec truck movements occur is so complex and so unbalanced that no immediate total improvement is possible. The factors which lead to this complexity go far beyond truck regulation, or even transportation. There have been recent indications of formidable difficulties with Quebec. Work permits are not available to residents of Ontario whereas residents of Quebec are free to take employment anywhere, at any time in Ontario. <sup>5</sup>

Trucking regulation as it is applied by Quebec is also applied for Quebec. As it serves in particular cases to protect one Quebec trucker from another, it serves to protect all Quebec truckers from all others. Quebec transportation law in its broader context might be viewed as a policy instrument used to achieve socio-economic objectives outside the transportation sector.

The Committee does not argue with the Quebec position as it is perceived. It only notes the apparent differences between the Quebec and Ontario attitudes. While not subscribing necessarily to the specific ways in which Quebec views and uses its transportation laws, the Committee's recommendations with respect to a more active role in the setting and coordination of objectives which can be served by transportation in Ontario, may help to better align the perspectives of the two provinces.

The Ontario Government must recognize its responsibility in this regard. It must then press for meetings with the leaders and officials of Quebec. Clearly, the principles of the resolution to current problems must be defined and agreed to by the Governments. In the absence of such an agreement, officials' meetings will be meaningless and



serve only to frustrate Ontario residents. The Committee was informed that a meeting was to be held between the Ontario Minister of Transportation and Communications and the Minister of State for Quebec in the fall of 1976. The meeting was never held because of the Quebec election, November 15, 1976.

That that meeting was not held is disappointing to the Committee and to all the people of this Province involved in the movement and shipping of goods. That an equivalent meeting has still not been held is aggravating an already bad situation. That there are no prospects for such a meeting between responsible ministers from both provinces is tragic.

### 3.5 Recommendations

The Committee recommends that:

1. The Ontario Minister of Transportation and Communications and the Ontario Minister of Revenue press their counterparts in Quebec and other appropriate Ministers of the Province of Quebec for a series of meetings at an early date to discuss the fundamental principles, both economic and political of freeing the movement by highway of goods between the provinces from unnecessary and unequal regulatory and tax laws.
2. That the Minister of Transportation and Communications and the Minister of Revenue include in these discussions considerations of the following factors:
  - (a) registration fees for leased vehicles;
  - (b) the extension of the 1975 reciprocity agreement to apply to all commercial vehicles;

- (c) equitable arrangements for the collection of gasoline and/or other fuel taxes from non-residents;
- (d) the imposition of or exemption from sales taxes on private and for-hire vehicles and the pro-rating of such taxes;
- (e) the operation of Quebec dump trucks on road construction projects in the Regional Municipality of Ottawa-Carleton;
- (f) confirmation and elaboration of joint hearings and/or reviews and/or appeals by the Transport Boards of the two Provinces;
- (g) enforcement of relevant laws by means of detention of vehicles and arrest of drivers - inspection stations - interprovince communication;
- (h) clarification and definition of products of and from a farm or forest which are exempt from regulation;
- (i) the position of the Ontario Northland Transportation Commission in respect of the operation of its road transport company;
- (j) Workmen's Compensation assessments, qualifications of insurers and the application of or exemption from corporation and income taxes;
- (k) operating authority of Quebec and Ontario commercial vehicles operating in transit through the other province without pick-up or discharge of shipments therein;
- (l) special permits for overweight or overdimensional loads;
- (m) appearance of counsel at sittings of regulatory boards;
- (n) "piggyback", freight forwarders, lessors, agencies for national carriers of household goods, owner-operators, brokers, tariff of tolls;
- (o) provision for continuous contact at the Ministerial level for future discussion;
- (p) provision to the joint Ontario-Quebec officials committee specific policy guidelines for solutions to the problems which now exist in Ontario-Quebec transport.

3. The Ontario Highway Transport Board be complimented for its efforts in promoting joint hearings with the Quebec Transport Commission and encouraged to further the relationships now established with the Commission.
4. Ontario negotiate with Quebec to derive a reciprocal agreement with regard to the quarterly issuance of commercial motor vehicle and public commercial vehicle licences for vehicles owned by residents of the other jurisdiction .
5. If an agreement cannot be struck within three months of this report to the effect that both jurisdictions will issue 3 or 6 or 9 or 12 month plates for vehicles owned by residents of the other jurisdiction, then Ontario issue only annual plates, licences and permits to Quebec carriers both private and for-hire in a similar and reciprocal manner as Quebec.

PART V - CHAPTER 3

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4. Greater Ottawa Truckers Association, A letter from L. Sauve to R.H. Humphries, (Ministry of Transportation and Communications) February 18, 1977.
5. Stevenson, Hon. B., Hansard, April 15, 1977, Page 503.



## CHAPTER 4

### GOVERNMENT - INDUSTRY RELATIONSHIPS

#### 4.1 The Need for Effective Communication

The Committee has stressed throughout this Report the need to emphasize and improve communications between the transportation industries and related ministries and agencies of the Ontario Government.

The Committee has recommended an advisory committee be formed as an assist to the Minister in developing policy. While the concept is not new, a multi-disciplinary, multi-modal committee is envisaged. Representation from labour, the for-hire and private truck transportation industries and the rail sector should be invited to participate. The motor vehicle manufacturers, the Law Society, Toronto Harbour Commission, consumers and others should be involved.

The Committee has noted, quoted and complimented the participants in the Advisory Council's Workshop on Energy in transportation.

The Committee has called for a coordinated examination of educational needs within the transportation industries. There is a need for further research into all aspects of truck transportation. The required research cannot be done by either government or industry in isolation one from the other.

Many of the Committee's recommendations with regard to the Ontario Highway Transport Board contemplate the Board advising truckers, shippers and consumers on matters of law, policy and procedure.

The Committee commented in the Interim Report on the consultative programs of the Ministry of Transportation and Communications and the Ministry of Industry and Tourism. These ministries have two programs designed to aid small business operators in Ontario to become more aware of transportation.

These ministries write and publish a Physical Distribution Newsletter to advise Ontario industry of developments in the transportation world. The newsletter is mailed to over 7,000 companies in Ontario, many of which are small businesses.

The Ministry of Transportation and Communications is alerted to specific industries encountering problems with transportation, be it high freight rates or service. Upon receipt of notice from M.I.T., staff of the Ministry of Transportation and Communications visit the business concerned. A complete analysis is then performed, usually resulting in recommendations aimed at reducing the cost of transportation.

Great success has been achieved to date, in fact savings of \$135,000 and \$70,000 per year have been made by two specific companies. Although these two examples are rarities, savings of \$10,000 and better have been made and will probably continue to be made in future analyses. <sup>1</sup>

The programs outlined were conceived over a year ago, after it was determined that many small companies did not have the expertise to be constantly aware of all transportation services and options. Many

were paying excessive transportation costs. The programs indicate the high level of cooperation between the Ministry of Transportation and Communications and the Ministry of Industry and Tourism, so necessary in undertakings of this nature.

These programs illustrate that dialogue and assistance can be a two way street. These experiences illustrate the reasons why transportation business educational programs cannot be uni-modal or limited in their application to the suppliers of transportation.

There is no single voice for commercial motor vehicle operators in Ontario.

The Ontario Trucking Association membership operate only 10.8% of all trucks and tractors registered in Ontario.<sup>2</sup> This means there is no way to reach the commercial vehicle population as a whole. The Committee notes the formation of the Private Motor Truck Council of Canada, incorporated by letters patent December 1976. This Council will, it is hoped, take an active role in promoting safety on Ontario's highways by all its members. The Council provides a further voice for truckers to government - and a further avenue to truckers through which government can disseminate information describing new programs.

As stated elsewhere in this Report, the Committee does not believe in government regulation as an end itself. New programs of regulation must be examined in terms of cost benefit analysis and truckers must assume their role in the process. Legislation alone will not achieve safety. New programs must have the support and financial commitment of all those who own and operate commercial vehicles as or in their business.

4.2 Recommendations

The Committee recommends that:

1. The Ministry of Industry and Tourism and the Ministry of Transportation and Communications continue their Physical Distribution Consulting Program with a view towards increasing the efficiency of the program to the benefit of the small shippers of Ontario.
2. The experiences of these programs be examined by the groups recommended by this Report to study transportation educational needs within Ontario.
3. An Advisory Council to the Minister be established as recommended in Chapter 3, Part II of this Report.



PART V - CHAPTER 4

1. Ministry of Transportation and Communications, A letter from A.G. Sharp, to B.B. Caldwell, September 24, 1976.
2. Op Cit., Ontario Trucking Association, Brief to Safety Committee 1976.

## CHAPTER 5

### EDUCATION

#### 5.1 Education

The Committee has read that:

Transportation is an activity that involves the movement of people and goods from one place to another. As a consequence, it is one of the most significant aspects of the spatial phases of man's everyday life. To perform its functions, transportation must utilize the mechanical and physical equipment developed by the physical scientists and engineers. It requires huge capital expenditures to provide the necessary facilities and large labour force to operate them. The technical problems of business organization and traffic management require specialists in this area of the activity. The necessity of transportation for defense and for organized community life has led government through the ages to participate extensively, and in various ways, in the supplying of the service. In all countries, therefore, transportation is a matter of prime concern to the governments. In countries where private enterprise renders transportation services for others, specialized forms of public control have grown up, and a large body of transport law has emerged. Finally, transportation, with its huge demands on economic resources, has been of special interest to the economist because of the unique place it occupies in the economic activity of society, and because of the unique institutional setting in which it discharges its functions.

It is clear, therefore, that one can scarcely discuss transportation as such. It must be dealt with primarily from the standpoint of the particular discipline involved. Furthermore, in many respects each one may be self-contained in its treatment. However, it is necessary to be aware of the interrelationships. The economist is concerned with the problem of the economical allocation and utilization of resources as

this relates to transportation. He cannot deal with it, however, in a vacuum. He must recognize the impact of technical developments and the implications of the political, legal, and institutional arrangements under which the services are rendered.

As has already been noted, transportation consists of the movement of persons and goods from one place to another. It therefore involves considerations of both time and place, and is a creator of time and place utilities. In the process of creating these utilities, it is an integral part of production. It is also of itself an object of consumption. <sup>1</sup>

Transportation in broad terms is a massive subject. Transportation in modal terms is extremely complex. Transportation as a business is a demanding career.

If transportation is to be usefully examined and understood at any one or all of these levels, highly qualified specialists are required. Professionals are then required to compile and interpret the knowledge from each of the specialties.

The Committee is impressed by the necessity of transportation to today's complex social and economic structures. The Committee is impressed also by the lack of expertise in transportation studies and by the lack of an integrated education program.

The Committee feels strongly that a more active role must be taken by the Province and educational institutions to overcome this deficiency.

## 5.2 Universities

The Committee has read that:

Transportation, particularly as the result of the impact of the spectacular development of recent technology, has emerged as one of the most important areas of economics and

public policy at the present time. The enormous investment requirements, the emergence of many modes, and the changing relations among them have given rise to issues that are among the most complex faced by government today at all levels - local, provincial and federal. <sup>2</sup>

If the Ontario Government is to play the role that this Committee has recommended, it must have the expertise. The expertise cannot be developed without educational programs at the university level. There is now a shortage of the expertise and an absence of planning to overcome this problem.

Government cannot and should not attempt to gather unto itself all the talent necessary to be totally aware of all aspects of transportation. It is impossible and imprudent. But if government is to plan policy and infrastructure, it needs specialized economists, engineers and other professionals. Continuing contact with industry will serve to temper this expertise with real world experiences.

The Committee is aware of existing university courses relating to transportation. Particular mention should be made of the York - University of Toronto Joint Program in Transportation. The background purposes and approach of the Joint Program is summarized by Figure 1.

The Committee is also aware of transportation - related courses at Waterloo University, Queens University, Lakehead University and the University of Western Ontario.

Courses are available and they are being taken. What concerns the Committee is the ad hoc development of these programs and the lack of any comprehensive, coordinated commitment by the Government or by educational institutions to transportation education at this level.



JOINT PROGRAM  
IN TRANSPORTATION



BACKGROUND

The diversity of the Canadian environment, its great size, and the erratic pattern of population and resource centers which results, mean that the transport system must inevitably be expensive and in remote areas very basic. Only 22 million persons sustain a network within a total area of almost four million square miles, a per capita impact that exceeds that of most other countries. Thus transportation has become an issue of overriding concern.

As the demands upon the system have grown, this concern has increased to the point where transportation has become almost a new field of study, involving the participation of professionals from many disciplines and industries, as well as that of the residents of the communities served.

Transportation problems are complex and solutions are compromises at best. Policy makers in government and industry need coordinated information on alternatives, the advantages and drawbacks of each, and how the best choice can be made.

The Joint Program in Transportation is contributing to the formation of such a body of information by its activities in promoting research and education in transportation at two universities — University of Toronto and York University.

The Joint Program was established in 1970 to identify, coordinate and strengthen the work in transportation being carried out by the various faculties at the two universities.

Major funding for a four-year period was provided by the Canadian Transport Commission, and subsequently by the Transportation Development Agency. In 1974 this funding was extended for a further three years.



INTER DISCIPLINARY RESEARCH

In 1975 the Joint Program administered the financial support of three inter-disciplinary study groups for research in important transportation problem areas in Canada.

Urban Transportation Policy Impact Study — to develop a new model for decision-making which would include the inter-dependency of urban policy decisions

Transportation Impact Assessment Methods and Procedures — to study both the immediate and cumulative effects of various transportation projects on the total environment

National Transportation Policy for Canadian Marine Transportation — to study federal policy concerning the development of a Canadian deep-sea fleet, management of the Mackenzie River Waterway, marine technology in the Arctic, and Canadian lake shipping.

The Joint Program encourages group research in other relevant problem areas.



OTHER RESEARCH SUPPORT

The following types of assistance are available through the Joint Program for research activities:

- Research Grants to sustain transportation studies by faculty members of the two universities
- Assistance in arranging contract research projects with other agencies
- Graduate student research assistantships
- Summer student grants (to \$2000 for three months for original research)
- Student small grants (up to \$200 during school year for a variety of projects related to course or thesis work)
- In addition, the Joint Program provides information on fellowships
- The Joint Program directly supports small research projects, and the development of research proposals for large scale support from other agencies.



GRADUATE PROGRAM

The Joint Program does not register graduate students, this function remaining with individual faculties and departments. Thus, there is no overall degree program in transportation. Some degrees within disciplines identify a transport specialty. The following faculties and departments offer graduate courses in transportation as part of their degree programs—

University of Toronto: Departments of Chemical Engineering, Civil Engineering, Geography, Industrial Engineering, Mechanical Engineering, Political Economy, Urban & Regional Planning, Institute for Aerospace Studies, Faculty of Management Studies.

York University: Departments of Economics, Geography, Political Science, Faculties of Administrative Studies and Environmental Studies, Osgoode Hall Law School.

Detailed information on courses related to transportation offered at the two universities is available through the Joint Program.

The Joint Program provides funds for the development of new programs and areas of concentration. In 1974 a grant was given to the Guided Ground Vehicle Engineering program at the University of Toronto to help form an integrated core of courses. Continued support is being given the Transportation Management program at that university, which combines the resources of the Faculty of Management Studies and the Department of Civil Engineering



PUBLICATIONS

The Joint Program undertakes to publish the following series:

- Working Papers: interim reports of ongoing research sponsored by the Joint Program
- Research Reports: technical reports deriving directly from research projects sponsored by the Joint Program

Transportation Reprints.

papers arising from research of the Joint Program and previously published in professional journals

Transportation Papers:

major documents such as monographs and proceedings of colloquia sponsored by the Joint Program, as selected by an editor and external review board

A modest price is charged to cover the cost of printing and mailing. A complete list of publications and information on ordering is available upon request.

The Joint Program Newsletter, appearing four to five times each year, contains information on research projects, fellowships and awards, new publications, courses and workshops, conferences, selected upcoming events throughout the world and other news items. Subscription is free.



FOR MORE INFORMATION

The following staff members are available to assist with further enquiries:

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Secretary 928-6238

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### OTHER ACTIVITIES

Researchers in transportation are invited to report on their projects at seminars given each year. In addition, a bi-weekly seminar series on Canadian Transportation in the 70's continues at the two universities. These informal meetings stimulate the interchange of ideas between senior representatives of industry and government, university researchers, and graduate students, and will be continued at York or the University of Toronto.

An academic leave program, arranged between the Canadian Ministry of Transport and the Joint Program, allows for greater interaction between the academic community and government. A number of executive development courses have been held at York University for transportation managers in government.

A faculty internship program has been established to provide faculty members with the opportunity to work within established government transportation agencies.

A summer internship program has been established within the Ontario Ministry of Transportation and Communications, for students from developing countries who are doing graduate work in transportation related fields at York and Toronto universities.

The Joint Program provides research and reference assistance through an information service. An information retrieval system now being set up will give controlled access to a broad base of information — documents, individual profiles, correspondence and names of individual experts. The service also provides information on financial assistance, responds to general enquiries, and maintains active liaison with other transportation information centres, agencies and libraries in Canada.



### OTHER CENTRES

There are four other transportation research centres similar to the Joint Program now operating in Canada. These are:

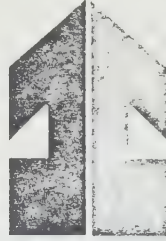
- Centre de recherche sur les transports, à l'Université de Montréal
- Canadian Institute for Guided Ground Transport, at Queen's University
- Centre for Transportation Studies, at the University of Manitoba
- Centre for Transportation Studies, at the University of British Columbia

### UNIVERSITY OF TORONTO - YORK UNIVERSITY JOINT PROGRAM IN TRANSPORTATION

Centre for Urban & Community Studies, 150 St. George Street, Toronto, Ontario M5S 1A1  
York University Transport Centre, 4700 Keele Street, Downsview, Ontario M3J 1P3



## UNIVERSITY OF TORONTO YORK UNIVERSITY JOINT PROGRAM IN TRANSPORTATION



The Committee well recognizes the benefits of the existing autonomy of Universities in Ontario. However, the Committee is frustrated by the lack of coordination in this area of education. People in the academic world must be encouraged to talk with one another with industry and with Government.

The Committee has continually been presented literature on transportation - particularly goods transportation - which either begins with a comment to the effect that "there is little absolute data on this subject but" - or which ends with "all the foregoing is subject to change given more definitive data. More research is required before conclusions can be drawn".

The time has come when this situation can no longer be allowed to continue.

Some individual Committee Members travelled to the United States to examine the courses of study of the University of Tennessee, Michigan State University and the University of Michigan. The Members were impressed at what they saw. The University of Tennessee offers a comprehensive program under its Faculty of Business Administration. Transportation studies of all types and across all modes are coordinated within that faculty.

In Minnesota, one Committee member learned of a small business program offered to local cartage operators. The courses were offered at night and were widespread enough that students - independent truckers by day - were not required to leave their home town to take the course.

In Michigan, another of the Committee members was impressed by a course offered through the Business Division of Michigan State University. This program was successfully designed to attract people from within the transportation industries to upgrade their professional skills.

Programs within the University of Toronto dealing with transportation are spread between the Faculty of Applied Science and Engineering, the Department of Geography, the Faculty of Management Studies, the Department of Political Economy and the Department of Urban and Regional Planning.

York offers transportation-related courses through its Faculty of Administrative Studies, Department of Economics, Faculty of Environmental Studies, Department of Geography and Department of Political Science.<sup>3</sup>

Such a distribution of courses, while recognizing the diversification of transportation as a subject of study, is not conducive to coordinated study or to discussion between disciplines.

### 5.3 Community Colleges

The Committee was advised by the Ministry of Colleges and Universities of the courses which are now offered at community colleges. The available courses are described in Appendix U. Contained as well is a summary of the number of students enrolled in each course.<sup>4</sup>

The courses now available in subjects relating to transportation are summarized in figure 2.



<u>COURSE</u>	<u>DURATION</u>	<u>COLLEGE</u>
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1. Transportation Planning Technology	Three Years	Mohawk (Fennell)
2. Motor Carrier Administration	One Year	Sheridan (Brampton)
3. Transportation Planning	Two Years	Sheridan (Oakville)
4. Transportation Systems Planning Technology	Three Years	Humber (Rexdale)
5. Urban Transit Operations	Two Years	Centennial (Ashtonbee)
6. Straight Truck Driver	Three Weeks	George Brown
7. Tractor Trailer Driver	Four Weeks	George Brown

FIGURE 2

Three observations are possible of the current offerings of community colleges in transportation-related studies. Those are:

1. There are no courses in the north.
2. There is no coordination of the individual course offerings.
3. There are no business-oriented programs which relate to all modes of transportation of goods.

The Committee recognizes the original mandate of the colleges was to fill the needs of the communities in which they were located, by offering job-oriented courses for which there was a demand.

On one hand, it is difficult to quarrel with this objective. It is worthy and should be pursued. On the other hand, the Committee believes that more coordination of programs is possible and desirable through the Ministry of Colleges and Universities. This can be done without severely affecting the original goals.

#### 5.4 The Canadian Institute of Traffic and Transportation

The Committee received a considerable amount of information from the Canadian Institute of Traffic and Transportation. The Institute offers a five year program entitled "Professional Development in Transportation and Distribution Management". The Institute has prepared the study material for the first two years of the program; the final three years are taken through a university. The University of Toronto offers this program in Ontario and it is available only through correspondence. Lecture courses are available in Quebec.

The program is comprehensive and useful. In the past, it has graduated over 500 students who represent carriers of all modes, shippers and government. The Institute and its supporters in industry are to be commended for the quality of this program. The University of Toronto is encouraged to continue its affiliation unless the course could better be offered through the Community college system.

The Committee sees several areas of distinct need for further educational programs dedicated to particular aspects of transportation.

## 5.5 Present and Future Needs

### 5.5.1 Management in Government and Industry

The senior management and planners within government and industry would be well served by university level programs dealing with the theory, economics and law of all transportation modes, co-ordinated and established with anticipated future needs in mind. For too long, transportation studies have been mode-oriented and academically parochial.

The Commitment to such a program now would guarantee a flow of well-educated, well-rounded individuals to government, industry and labour in the years to come. This must be undertaken to guarantee the degree of sophistication which will be required to run, analyze and assist one of the most necessary and complex industries in society - transportation.

Literature abounds with cries that more research is required in this field. In conjunction with undergraduate and graduate programs, there is a real need for research. The type required can be provided through universities such as the York-University of Toronto Joint Program. Areas which require objective research, identified either by industry or government, can be examined by university researchers in a meaningful way, only if the effort and expertise resident there is sophisticated enough to handle the task.

There is at the present time a shortage of data, expertise, technical skills and academic research. A capable research program available to industry would allow a series of objective policy recommendations which could become part of government, industrial, commercial or social policy decisions. Public seminars and symposia utilizing those people directly involved with the transportation industries, consumers, energy suppliers, equipment suppliers, and others should be held on a regular basis to examine Ontario problems.

Clearly, as new research capability is required, government must assist the overall process with efficient programs to make available the huge bank of raw data which it accumulates every year.

In the Interim Report, the Committee acknowledged the difficulties caused by a lack of specific data respecting trucks and pointed to the benefits of the new accident reporting form. It is to be hoped that this form, with appropriate analysis of computer records by the



Ministry of Transportation and Communications, will assist the Ministry and the industry to assess in a more meaningful way both the problem and the progress of commercial motor vehicle safety.

Job-oriented programs at the community college level designed to meet the specific needs of management in transportation companies should be expanded. Such courses would also benefit government planners within ministries and administrators within the Ontario Highway Transport Board.

There is a real push in Europe towards this concept. The European Economic Commission seeks to lessen the unilateral economic intervention of member states in the transport sector. It also seeks to make more uniform the laws between member states.

At the foundation of its current proposals is a requirement that those wishing to enter the trucking industry must hold a transport manager's licence. There are continuing discussions on the details of the program and its application - whether it would apply to both private and for-hire carriers for example is one contentious detail.

The EEC proponents of such a program see it as a form of quality control rather than of economic quantity control.

The EEC directive 74/561 requires that:

An operator shall be of good repute, of appropriate financial standing and professionally competent. An operator who is not professionally competent may designate another person who is, provided he is of good repute, and that he continuously and effectively manages the transport operations of the business. Similarly, an undertaking must nominate a person who satisfies these requirements. Other persons in the undertaking may also be required to show good repute....

Professional competence should be established by successfully completing a written examination.

The Directive requires the following in connection with professional competence:

- (a) the possession of skills in the subjects listed in the Annex;
- (b) recognition by the body authorised by each Member State;
- (c) acquisition of knowledge by:
  - i) attending courses;
  - ii) practical experience; or
  - iii) a combination of both;
- (d) that holders of diplomas implying sound knowledge of the relevant subjects may be exempted;
- (e) that the certificate issued by the body at b) above shall constitute proof of professional competence.<sup>5</sup>

The British Government reacted to the directive by discussing developed proposals regarding course standards, program administration and other details with industry and labour. Many issues had not been resolved at the time the Committee's representatives were in Europe. This was true not only in Britain, but also in Belgium and Germany.

A list of the subjects referred to by the directive follows:

A. Subjects of which knowledge is required for transport Operators intending to engage exclusively in National Transport Operations:

1. Law

Elements of civil, commercial, social and fiscal law, as necessary for engaging in the occupation, with particular emphasis on:

- general contracts;
- transport contracts, with particular reference to the responsibility of the haulage operator (nature and limits);

- commercial companies;
- ledgers;
- regulations governing labour, social security;
- taxation systems.

2. Business and financial management of an undertaking:

- methods of payment and financing;
- costing;
- pricing and haulage terms;
- business accounts;
- insurance;
- invoicing;
- transport agents.

3. Access to the market:

- provisions relating to the taking up and pursuit of the occupation;
- transport documents.

4. Technical standards and aspects of operation:

- weight and dimensions of vehicles;
- vehicle selection;
- type-approval and registration;
- vehicle maintenance standards;
- loading and unloading of vehicles.

5. Road safety:

- laws, regulations and administrative provisions applicable to traffic;
- traffic safety;
- accident prevention and procedure in the event of an accident.

B. Subjects of which knowledge is required for haulage operators intending to engage in international transport.

- subjects listed under A;
- provisions applicable to the transport of goods by road between Member States and between the Community and non-member countries arising out of national laws, Community standards, international conventions and agreements;
- customs practice and formalities;
- main traffic regulations in the Member States. <sup>6</sup>

Joint industry-government discussion on educational needs within the transport industry was precipitated by the EEC document. While the EEC was not motivated by the same objective that motivates this Committee, there does exist a common interest in upgrading the quality and expertise of the transport sector.

#### 5.5.2 Truck Driving as a Trade

The Committee has noted the introduction of the Classified Driver's Licence system and endorses its principle in relation to drivers of commercial motor vehicles. Driving the larger of these vehicles is difficult and requires specific knowledge and ability.

This system will cause a pronounced need for responsible driver training facilities notwithstanding the private and community college programs now in existence. The driver training programs offered through George Brown College currently have 70 students enrolled. The Committee believes very strongly that these courses must be expanded.

The commercial motor vehicle driver must not only be able to physically handle his vehicle, he must also know the laws of this and other jurisdictions in relation to rules of the road, customs procedures, weights and loading practices. He must be knowledgeable of the load being carried - how to load it and how to react in cases of emergency.



He must also know the mechanics of his vehicle. His knowledge is multi-disciplinary. The implications of a mistake are too severe.

The Committee noted the commercial driver training practices in Europe, and the tendency of government and industry to work together to devise and run meaningful programs. Germany has recognized truck driving as a specific trade, a decision which this Committee endorses.

#### 5.5.3      The Ontario Highway Transport Board

Specific expertise will be required by the Ontario Highway Transport Board to carry out the mandate proposed by this Committee. The Board must develop its own training program for staff, in addition to seeking new people knowledgeable in the transportation of goods and the workings of transportation industries. The Board will need people competent in law, accountancy and ratemaking. The Board must quickly define its needs for expertise and look within itself for training and to Government, industry and the community colleges for the provision of that expertise.

#### 5.5.4      Practitioners Before the OHTB

The Committee devoted part of Chapter 5 Part II of this report to the subject of Class B Practitioners and recommendations were made therein.

## 5.6 Recommendations

The Committee recommends that:

1. The Ministry of Colleges and Universities proceed with its program in motor carrier administration developed in conjunction with the Ontario Trucking Association and that during the first year of the program it consider ways and means offering the program at other colleges.
2. The Ministry of Colleges and Universities meet with representatives of Ministry of Transportation and Communications, labour, the transporters and shippers of goods and educators to examine the long run, multi-modal and uni-modal job-oriented courses for which there is a future need.
3. The Ministry of Colleges and Universities meet with representatives of the Ministry of Transportation and Communications, labour, the transporters and shippers of goods and educators to examine the long run, multi-modal and uni-modal planning, law and business courses for which there is a need for university level programs.
4. The group outlined in 3 above consider the establishment of an independent group with provincial funding to promote transportation education in Ontario, through granting fellowships, scholarships and bursaries to students of transportation and to promote transportation research in Ontario by assisting in the establishment of, amongst other things, a research library in Ontario.
5. The Ministry of Colleges and Universities present to the Government the findings of such meetings with recommendations as to the need for and nature of comprehensive education programs at the post secondary level.
6. The Ministry of Colleges and Universities designate truck driving as a recognized trade under The Trade Schools Regulation Act and expand educational opportunities appropriately.
- 7.\* The Ministry of Transportation and Communications, the Ontario Highway Transport Board the Law Society of Upper Canada, in conjunction with the Ministry of Colleges and Universities, other interested governmental and non-governmental groups consider the establishment of a program at the community college level offering a practitioner's diploma which would enable graduates not authorized under The Law Society Act to practice for compensation before the Ontario Highway Transport Board.

8. The Ontario Highway Transport Board report to the Minister of Transportation and Communications on the type and availability of the expertise required to fulfill the tasks proposed by this Committee and that in so doing, the Board be conscious of the present and future need to train its staff.
9. The Ministry of Transportation and Communications develop automated processes to measure the involvement of commercial motor vehicles in motor vehicle collisions such that future programs to promote and require certain standards of commercial driver and commercial vehicle safety can be based on more sophisticated factual knowledge.
10. The Ministry of Transportation and Communications consider ways to inform the public of the number of commercial vehicles inspected under Section 58 of The Highway Traffic Act.

\* Repeated from Part II, Chapter 5 .

## PART V - CHAPTER 5

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5. The Road Haulage Association (of Great Britain)., Memorandum by R.M.A. on the Department of the Environment's second consultation paper on the EEC, Directive on Admission to the Occupation of Road Haulage Operator. RH/N.C/500, July 1976.
6. European Economic Community's Council Directive of November 12, 1974 on Admission to the Occupation of Road Haulage Operator in National and International Transport Operations. 74/561/EEC. Published in the Official Journal of European Communities, 19/11/74.

### FIGURES & TABLES

- |          |  |
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| Figure 1 | York - University of Toronto Joint Program in Transportation |
| Figure 2 | Community College Transportation - Related Courses.          |



## CHAPTER 6

### REGIONAL DEVELOPMENT

The availability of transportation service is critical with respect to the location of industry and population within and between cities and regional areas of Ontario.

There are several pertinent elements of transportation which break into the following three categories:

1. Provision of infrastructure,
2. Provision of some service, and
3. Provision of the particular qualities of service which are required in particular locations and at prices which can be afforded.

#### 6.1 Infrastructure

It is primarily the federal government which is concerned with rail, water and air infrastructure although the province does fund the construction of some remote area airstrips. There has been consideration given to expanding airstrip development assistance to southern Ontario but these plans have not materialized.

The direct and primary role of the province is in planning and providing highway infrastructure. The province, through the Ministry of Transportation and Communications assists and funds municipalities in the planning, design and construction of municipal roads. The Ministry of Transportation and Communications is the agency responsible for the planning, design and construction and maintenance of primary, secondary and tertiary highways in the provincial network. Today, there are over 13,000 miles of provincial highways in Ontario.

Appendix U - 1 contains the Ministry of Transportation and Communications' most recent ten year expenditure statement which includes amounts expended for capital construction.

If industrial and population location is to be encouraged at one location over another roadway infrastructure must be provided coincidentally. This is equally true of development within and between municipalities and between and within different regions of the province.

## 6.2 Service

Once again, the Province's role is somewhat limited in comparison to the federal government's. The Province has a direct role only in respect to intra-provincial truck transportation. Control over extra-provincial truck transportation systems is constitutionally a role for the federal government, although responsibility was delegated in 1954 to provincial regulatory bodies.

(See Part III, Chapter 1)

Ontario has played a significant role in the planning of air services in Northern Ontario, but any contemplated service is subject to the approval of the Canadian Transport Commission. The Province's role is therefore an indirect one.

The economic regulatory control which the Province has exercised over for-hire trucking in Ontario provides a real, practical mechanism for ensuring that some service is provided to all parts of Ontario. The process must serve this very basic objective of ensuring that service is provided.

### 6.3 Type & Quality of Service.

There are many ways in which a government may attempt to ensure that transportation services are tailored to suit the needs of a particular area or a given municipality or the Province generally. The Committee has discussed some of the ways in other parts of this Report. The Committee has for example, consistently supported the principle of providing service at reasonable rates. Readers are referred particularly to discussions of:

- Operational Controls and the Licensing System, (Part IV, Chapter 3) and
- Rates (Part IV, Chapters 1, 3 and 5).

Arising from these discussions were:

- A basic commitment to effective competition on all given routes for existing traffic,

- A recommendation as to the lifting of the north of North Bay restriction.
- A rate review procedure to ensure that rates are cost related, that rates reflect a mileage taper where appropriate and that through and joint rates are filed where required by the public interest.
- A recommendation that the Ontario Highway Transport Board review the service by Class A carriers north of North Bay to ensure that the principles of competition and public necessity and convenience are being met.

The Committee has taken a broad view of the need for effective service to all areas of the Province. One must examine particularly the provision of effective service to northern Ontario.

Northern Ontario presents unique challenges to the planners of future development in this Province. A coordinated approach is necessary if the northern communities are to develop and become competitive with southern industry.

A commitment must be made by the Ontario Government if development and population are to be attracted away from the Golden Horseshoe, to the communities in the northern and eastern portions of Ontario. While transportation infrastructure, service and the quality of that service must form a significant part of government's overall efforts, transportation by itself cannot provide the total solution. Consideration of transportation and industry-population location create in specific cases a chicken and egg proposition. However, in the aggregate transportation reacts to meet demand. Demand is created primarily by factors outside the transportation industries.



The Committee notes the creation of the new Ministry of Northern Affairs which it hopes will assist in the setting and execution of coordinated and comprehensive policies designed to stimulate the growth of Northern Ontario. If the Government intends to make a commitment to the north, then a commitment to transportation infrastructure and service must be integral parts.

The Committee received no testimony of an empirical nature as to the pricing and distribution policies of major manufacturers. The Committee observed and has referred to what it believes is a growth of a total production-distribution system concept here in Ontario and in countries in Europe. In certain areas, provincial pricing policies of major manufacturers and retailers, such as Sears and Brewsters' Retail, have brought goods to people in virtually all areas of the Province at equal prices. Consumers near the place of production are subsidizing those in more remote areas.

That factors other than cost now play a large role in carrier ratemaking and would continue to play such a role in an economically deregulated trucking industry is a fact which cannot be overlooked.

The Government should further investigate cost of living and cost of doing business differentials between regions of the Province and include an examination of the contribution of transportation service, competition and pricing policies to those differentials.

#### 6.4 The Ontario Northland Transportation Commission

The Committee received testimony from the Ontario Northland Transportation Commission on three occasions during its hearings. The Ontario Northland Transportation Commission in its brief to the Committee stated its objectives in part as follows:

The Ontario Northland System was originally established in 1902 by The Timiskaming and Northern Ontario Railway Act of the Ontario Legislature and presently operates under the authority of The Ontario Northland Transportation Commission Act (Revised Statutes of Ontario 1970, Chapter 326.).

The Commission's objectives are to provide services in the most efficient manner through the use of private sector practices and methods at full economic costs. As these costs include both operating and capital replacement, the Commission is charged with generating sufficient revenue to cover the on-going capital replacement requirements.

The Commission can be compared to the Board of any private concern with the people of the Province of Ontario as the shareholders.

This was not the objective of the Ontario Northland Railway when it was originally chartered as a development "Road" for Northern Ontario.

It may not be the objective towards which the Commission should be working in the future. The Committee notes recent reports that the Ontario Northland Transportation Commission is moving towards a re-adaptation of its role as a tool of development in the north as far as tourism and passenger movements are concerned. If the Commission's role is to change and if the government's commitment to northern growth is real as may be implied by the formation of the new Ministry, then the provision of freight service must also be considered a practical and necessary policy instrument.

While regulated private carriers and effective competition between carriers may provide some solutions to Northern Ontario's freight transportation problems, they may not by themselves lead to a supply of trucking to all northern communities at low and equal rates. Variations in population and demand are so large, that a new role for the Ontario Northland Transportation Commission and for Star Transfer, might be required to achieve the necessary objectives in Northern Ontario.

The Government should undertake an evaluation of Ontario Northland Transportation Commission's role in the north in time that it may be publicly known when hearings are held with regard to the removal of the North Bay restriction.

#### 6.5 Recommendations

The Committee recommends that:

1. The Government further investigate cost of living and cost of doing business differentials between regions of the Province, including the contribution of transportation service, competition and pricing policies to those differentials.
2. The Government further examine ways to equalize the payment of sales tax on transportation services.
3. The Government use the information derived from 1 and 2 above to determine what policies can be applied to lower transportation costs to the benefit of communities distant from major markets.
4. The Government undertake an evaluation of Ontario Northland Transportation Commission's role in the north in time that it may be publicly known when hearings are held with regard to the removal of the North Bay restriction.





# **PART VI**

## **Specific Issues**

to discuss these issues. Two days were required to hear the representations which were made. Some groups made representations for the first time; others were appearing for a second time. As a result of testimony given during these special hearings, one further day was set aside to examine in detail the manner by which road salt is transported in Ontario. Three salt companies and two trucking service firms were invited to give testimony and all agreed to do so.

Since the Interim Report, the Government has amended the regulations under The Highway Traffic Act which require certain types of loads to be covered. As well, the Ministry of Transportation and Communications' dump vehicle inspection program has been extended.

The situation with regard to Ontario-Quebec dump vehicle movements has not changed significantly. As mentioned in Chapters IV - 4 and V- 3 the investigation of the Greater Ottawa Truckers Association by federal officials has occurred.

During the hearings prior to the Interim Report, a great deal of testimony was critical of the Ministry of Transportation and Communications for an alleged lack of commitment to the implementation of recommendations of the 1975 Ministerial Inquiry into the Dump Truck Industry. Many dump truck operators felt that implementation of all the recommendations of that Inquiry would go a very long way in allowing an equilibrium in the industry which in their view, had not existed for years.

The recommendations of that Inquiry were central to many of the presentations this Committee received. As a result, it is important to review for the public the recommendations and their status in so far as implementation by the Government is concerned.

As background, the Committee reminds readers that prior to 1968 an applicant for an "F" licence to authorize dump vehicle operations had to prove public necessity and convenience. However,

The Board issued certificates freely. Anyone desiring to enter the dump industry needed only a supporting letter from a County Engineer or a road contractor. The Board's certificate reflected the supporting evidence and was often limited accordingly. In effect, each such authority granted was of a temporary nature, because it was not possible to utilize the dump truck after the specific job was completed.<sup>1</sup>

For a number of reasons, including the impossibility of rationally applying the test of public necessity and convenience on either an "Ontario-wide" or "restricted to contractor" basis, the industry was effectively deregulated in 1968. During the years 1968 to 1975, no certificate of necessity and convenience was required from the Board to obtain a Class F licence. The situation which resulted has been described by some as chaotic. As a result, the Ministerial Inquiry into the Dump Truck Industry was appointed March 10, 1975. It reported to the Minister of Transportation and Communications on June 10, 1975. The report made 47 recommendations, the details and status of which are noted and attached as Appendix V. The status is that given by the Ministry of Transportation and Communications as of February 3, 1977.<sup>2</sup>

As a summary of the status of the 47 recommendations, the

Committee reasons as follows:

1. Four recommendations were not directly applicable to Government.
2. Seven recommendations dealt with the principle and process of re-establishing control of entry to the dump vehicle industry. While the procedures of the Ontario Highway Transport Board were criticized by some because entry was relatively easy during and immediately after the grandfathering period, the recommendations were implemented by Bill 3.
3. Seven recommendations dealt with rate filing for and by dump vehicle operations. Rate filing was not adopted by the Government.
4. Six recommendations dealt with minimum rate levels. There is a mix of acceptance and rejection of these recommendations. Minimum rates are set each year by the Ministry of Transportation and Communications and apply to all dump vehicles on Ministry of Transportation and Communications contracts where the truck operator (owner) is a contractor or subcontractor. They do not apply where a contractor purchases aggregate FOB the pit. In this case, the pit owner is the subcontractor.
5. Eight recommendations dealt with safety. These have all been implemented including the Classified Drivers Licence System, Dump Truck Inspection Program and Covering of Loads regulations.
6. Two dealt with brokers, neither of which have been implemented.
7. Five dealt with Quebec. The Ontario Highway Transport Board has been meeting with the Quebec Transport Commission. While Ontario law may be written to the principle of the remaining four recommendations, these have not been effectively implemented.
8. There remain eight recommendations. Of these, three have been implemented. One, gross load law, is under discussion with industry. One deals with Ministry of Transportation and Communications - Ontario Highway Transport Board relations and its status could be argued. One deals with a provincial standards association which could be implemented without government. The remaining two were rejected.



There are several particularly contentious issues within the dump vehicle industry. Those are:

1. Control of Entry,
2. Rates,
3. Brokers,
4. Weight and Loading Laws and Regulations,
5. Dump Vehicle Inspection.

### 1.3 Control of Entry

As a result of the investigations and recommendations made by the Ministerial Inquiry to the Dump Truck Industry and contained in its report of June 10, 1975, The Public Commercial Vehicles Act was amended by Bill 3, January 1, 1976. The amendments had the effect of once again requiring proof of public necessity and convenience to enter the dump vehicle industry. Since 1968, operators were required to be licensed under The Act, but did not need to submit applications for entry or extension to the tests of necessity and convenience. The amendments and related regulations created a new licence classification, Class R, which is defined as follows:

Class R authorizing the licensee to conduct a commercial vehicle service exclusively for the transportation other than by a tank truck or tank trailer, of,

- (i) sand, gravel, earth, crushed or uncut rock and stone, asphalt mixes, slag and rubble, and

- (ii) salt, calcium chloride, a mixture of sand and salt, and asphalt mixes directly to highway construction or maintenance sites or to stockpiles for further use on highway construction or maintenance sites.

The amendments to The Act contained provisions regarding "grandfathering" the privileges of those who had been performing Class R services in the past. An operator had to apply for authority on a grandfather basis prior to June 30, 1976. Any person applying after that date had to prove public necessity and convenience. The Committee heard considerable testimony that the system was not working because most of those applying for entry or privileges in more than the two basic regions were being granted licences. One Association stated:

Virtually all applications since January 1st, 1976, have been granted...the wholesale granting of licences in a field already saturated can only detrimentally affect every licence and industry itself...<sup>3</sup>

Another stated:

The present policy of automatic licensing for two regions for existing carriers, combined with relative ease of entry on the same basis for new entrants, results in effective deregulation.<sup>4</sup>

It was the opinion of those quoted above and many others that the tests of public necessity and convenience were not being applied stringently enough by the Board in Class R applications.

The dump vehicle segment of the for-hire trucking industry is unique. It is made so by the types of vehicles operated, the conditions under which both driver and vehicle operate and the extreme seasonal fluctuations in demand for such services. Many who enter

this field are not experienced in the complex techniques of small business operations and have not had any prior experience in the trucking industry.

The aggregate hauler must be mobile to a sufficient degree. His operation cannot be limited by route, by highway number or by place. Geographically, he must move around enough to keep his operation viable. Without sufficient mobility, the needs of aggregate producers and builders will not be met.

The nature of the Class R licence recognizes this need. The province is divided into five geographic regions which correspond to the administrative regions designated by the Ministry of Transportation and Communications. While not equal, each region contains significant population, aggregate supplies and highway miles, and is the scene of reasonable construction and salting activity each year. An operator is licensed for a minimum of two regions but can obtain authority for additional regions if public necessity and convenience will be served thereby. Within the areas authorized, the licensee is free to find business wherever and whenever he can.

Licensing by such large geographic regions is unique to the dump vehicle industry. In addition to recognizing the mobility required, the regional system has connotations insofar as the test of public necessity and convenience is concerned.

It is interesting that the Ministerial Inquiry recommended that the Class R licence be limited in grandfather provisions to one region

only. The amendments to The Public Commercial Vehicles Act originally were introduced to reflect this. However, the "one region" legislation was soon after amended again to prescribe a base licence covering two regions. There were those in the dump vehicle industry who supported an Ontario - wide licence as did most aggregate suppliers and contractors. The two region base Class R licence can be viewed as a compromise of the two opposing views.

The Ministerial Inquiry into the Dump Truck Industry reported:

On the side of demand, we find seasonal variations, a need for mobility and a constant growth in markets. In building construction, the season lasts longer and starts earlier, largely because cement can now be poured throughout the year. Yet there are times...when tandem axle dump trucks are not required except for snow removal and ice salting. In North-western Ontario, dump trucks are used extensively during the winter for hauling logs - by removing the box and substituting a flat platform...there appears to be less inclination to move dump truck equipment over long distances (although) the evidence did not form a distinct pattern...we recommend that the question of supply and demand for dump truck services receive continuing attention...the Ministry of Transportation and Communications regional structure (offers) areas in which to assess future availability of dump trucks in relation to the demand for their services. <sup>4a</sup>

The Inquiry's recommendations and the subsequent legislation imply a test of public necessity and convenience based partly on objective criteria, namely, on quantifications of supply and present and future demand. This may not be relevant on a province-wide basis because of the cyclical and peaking demand for dump vehicles. It is more reasonable to attempt the task on the basis of smaller areas, particularly when the nature and requirements of the industry vary so widely.



There are those who take the position that meaningful projections of supply and demand, even on a regional basis, are impossible. Some of the problems were put by one brief as follows:

It is vital to realize that the (aggregate) producer can neither create the demand for his product nor dictate the timing and intensity of that demand...the fluctuations in demand are so severe and so unpredictable that we know of no way that any licensing body could establish what is a proper number of vehicles to permit... <sup>5</sup>

The Committee has also heard the opinion that:

Actual entry and exit from the dump truck trade is now quite easy. Assessment of the possible market is not difficult. <sup>6</sup>

Some attempt must be made to quantify by region projections of demand for dump vehicles. The Ontario Highway Transport Board must obtain a feel for demand based on the Ministry of Transportation and Communications' planned construction program, aggregate producers' estimates of future volumes and other figures relating to the industry.

The Committee has heard time and time again that there are too many vehicles in the industry today. It has been the dump truck operators who claim the chronic oversupply and it is natural for them to take this position. Aggregate producers do not publicly share this view.

The Committee has done such a comparison and finds the increase to be reasonable. As of March 31st, 1975 there were 6,392 Class F operating licences authorizing the use of 10,342 commercial motor vehicles. The group included dump vehicles as well as livestock, lumber and brick carrying vehicles. It was estimated during the Ministerial Inquiry that 80% (8,275) of Class F vehicles were dump

vehicles performing services now required to be licensed under Class R provisions.<sup>8</sup> This implies that in the period March 31st, 1975 to January 15th, 1977 there was an increase in licensed for-hire dump vehicles operating outside an urban municipality from 8,275 to 9,591. This would represent an increase of 1,316 vehicles or 15.9% over 22 months, almost two years.

These statements however, do not reflect the basic fact that prior to Class R, dump vehicle operations were not exclusive to Class F. Thus, a carrier with a Class A, C, or D authority for example, could by law operate dump vehicles on an F privilege. The operations were similar in all respects to the operations now described as Class R operations.

Class R is exclusive; that is, a carrier with another authority must hold a Class R licence to perform the operations described. Thus, there were a number of dump vehicles hidden in other classes at March 15th, 1975 which were not included as Class F vehicles. In other words, vehicles operated under a Class F privilege are not reflected in Class F vehicle licence figures.

The result is that there were more than 8,275 dump vehicles actually being operated prior to the new law. The effect is to reduce the alleged 15.9% increase in vehicle numbers. The extent to which it is reduced is unknown.

The other factor which must be taken into consideration is that, regardless of the numbers of vehicles authorized under Class R

licences, not all vehicles are being operated. For example, the Committee was informed by one large Class R firm that it owns 121 tractors and 205 dump trailers but its Class R operating authorities permit the operation of 178 power units. 9

It is also interesting to trace in the years preceding the re-establishment of entry control, the trends in Class F operations.

Table 1 follows:

TABLE 1  
TRENDS IN CLASS F

<u>YEAR</u>	<u>OPERATORS</u>	<u>(# OF) VEHICLES</u>
1963	5,186	10,318 *
1967	5,123	12,942 *
1968	5,490	13,173 *
1969	5,632	13,299 *
1970	5,677	13,440 *
1971	6,218	10,163
1972	5,927	9,955
1973	6,184	10,258
1974	6,392	10,342
1975	6,306	10,340
1977 (Class R)	5,615	9,591

In 1956, there were 5,091 licensed Class F operators. Today, there are 5,615 licensed Class R operators.

\* Prior to 1970, these figures included trailers.

The number of licensed operators over the years has been reasonably stable. This observation does not reflect, however, the volatility within the industry, the turnover, or rates of return. Clearly, the number of licensed operators has increased, as have the number and capacity of vehicles being operated. It does not appear to be an undue increase over the long run, given a presumed increase in demand for aggregate and salt movements.

Perhaps the most significant trend over the years has been the influx of private dump vehicles owned by contractors and pit and quarry operators. The Committee cannot measure the increases which have occurred but believes that they have been sizeable. If this is true, it may be more of a cause for the unsettled conditions in the for-hire dump vehicle industry than are the conditions which surround entry into the industry.

It appears to the Committee that this trend will continue. The tendency may be increased by a recent decision of the Ontario Labour Relations Board. (This decision is discussed in Chapter 3 of this Part.) The for-hire dump vehicle industry, regardless of the trends within, is subject to a continuing condition of too many truckers chasing too few goods.

Already noted are the seasonal and daily fluctuations for aggregate and salt, and for transportation of these commodities. In the aggregate supply side of the market equation, a recent report of the Ontario Mineral Aggregate Working Party refers to "effective demand".



The concept of effective demand "insures against both temporary shortfalls in supply and reductions in competition within the industry".

That group went on to say:

Licensing surplus capacity appears acceptable given the unsophisticated state of demand forecasting and potential shortfalls in local demand...surplus capacity as a means of maintaining price competition however appears a questionable concept.

That group then recommended that, "regional licensing of capacity in the order of 125 percent of expected demand be used to ensure that regional supplies will be equal to any contingency".<sup>10</sup>

On the ability to forecast aggregate demand in Ontario, the Working Party noted many weaknesses of existing methodology. Since such projections have a profound effect on the projected need for dump vehicles, the Working Party's comments are worth noting:

A most important area for research involves a review of demand forecasting techniques for mineral aggregates...The forecasting techniques developed by Proctor and Redfern estimate the future consumption of aggregate and have shown the deficiencies of our ability to forecast demand. We need to know more about our demand patterns now, and the factors likely to affect demand in the future. Chapter 3 has already recommended that a general review of modelling techniques be considered to determine if the accuracy of the forecast model can be improved upon.

We further recommend:

- 58 That revised input co-efficients be developed based on actual consumption figures of major consumers in each category.
- 59 That control projections be developed based on the activity forecasts of major consumers, that is, Ministry of Transportation and Communications, Metropolitan Toronto, Canadian National and Canadian Pacific Railways, and construction associations.<sup>11</sup>

The same working party noted that at least 80% of current aggregate demand moves by road. Their report went on to recommend with regard to transportation:

- 60 That the impact of increased truck traffic on certain provincial highways be examined, and the costs of up-grading the provincial highway system to provide adequate roads for the purpose from Grey County to Toronto and to the London area be identified as soon as possible and compared to rail haulage costs. <sup>12</sup>

Amongst other recommendations made in that report which will affect the long run demand for aggregate transport was the following:

- 63 That more efficient uses of aggregate be investigated close to large urban centres as well as in areas with potential aggregate shortages and aggregate quality problems. <sup>13</sup>

Initiatives by the Ontario Government in these three areas will have an impact on dump truck transportation demand and on the ability to forecast demand.

The Committee concludes from the evidence available to it that:

- taking the numbers of for-hire and private dump vehicles together, there is no shortage of dump vehicles to serve aggregate producers, builders or salt companies;
- many for-hire dump vehicle operators have significant over-capacity;
- there will be patterns to future demand for aggregate and salt;
- there is a need to measure the number of dump vehicles being supplied, their capacity and the capacity of other modes.

The recommendations at 1.9 of this chapter reflect the Committee's response to these conclusions.

#### 1.4 Rates

##### 1.4.1 General

The Ministerial Inquiry made several recommendations with respect to rates in the dump vehicle industry. These included proposals to require rate filing by Class R operators which have not been implemented.

The Inquiry also recommended that any owner of a dump truck should be paid at least the Ministry of Transportation and Communications' minimum rate when carrying construction materials in respect of Ministry of Transportation and Communications contracts or contracts for any other Ministry or contracts subsidized by any Ministry. This recommendation was referred by Cabinet to individual Ministries.

The Ministry of Transportation and Communications, however, does not require minimum rates to be paid on subsidized municipal contracts. The Ministry of Transportation and Communications does not enforce the minimum rate with respect to the movement of salt. The Ministry of Transportation and Communications does not cause the rate to be applied to truckers who work for a subcontractor. The current year's rate is not applicable to carryover work.

Therefore, a number of situations exist in which the Ministry of Transportation and Communications' minimum rate does not apply. Clearly, it is the rates payed which have the greatest effect on the stability or lack of it in the dump vehicle industry. If rates were sufficiently high and the new dump vehicle inspection program proves effective, then there might be little purpose in further government action. But the Committee finds that rates are either too low or there is not sufficient continuing volume to allow existing dump vehicle operators to remain profitable.

There are many causes for low profit margins, not the least of which are general economic conditions and the lack of transportation education available to dump truckers. Other causes include the ease with which one may enter the business by purchasing a new or used truck with very little capital investment.

The Committee's original thought was to recommend the extension of the minimum rate to all contracts in all areas of the province. Though on the surface this would assure those gaining entry of a fair wage, as time passed, the Committee came to realize the serious difficulties with such a move.

1.4.2      The Ministry of Transportation and Communications  
Rate

The Ministry of Transportation and Communications' minimum rate is a single set of rates based on vehicle type applicable



to Ministry contractors and subcontractors where aggregate is carried in respect of a Ministry construction contract.

The 1975 rates were:

#### SINGLE AND TANDEM REAR AXLE TRUCKS

	<u>BY WEIGHT (PER TON)</u>	<u>BY HOUR (PER HOUR)</u>
For the first two miles or any portion thereof	44¢	Single Rear Axle \$ 14.50
For each mile, or any portion thereof, in excess of 2 miles up to & including the 10th mile	8¢	Tandem Rear Axle \$ 17.95
For each mile, or any portion thereof, in excess of 10 miles	7¢	

#### TRACTOR-TRAILER COMBINATIONS

	<u>BY WEIGHT (PER TON)</u>
For each mile, or any portion thereof, up to and including the 10th mile	6¢
For each additional mile, or any portion thereof.	5¢

The calculation of the rates is done each year and generally new rates are established to cover the next year. Truckers and contractors are given an opportunity to comment. The process is complex, as the following description illustrates:

Operating Costs:

Assume 1400 hours operation per year.

	<u>Per Year</u>	<u>Per Hour</u>
(a) Depreciation: approximately 20% of new cost	\$ 3,638	\$ 2.60
(b) Interest, insurance parking: 10% of average investment	1,091	.78
(c) Repairs: 21% of new cost	3,820	2.73

The above percentage estimates were taken from the 1973 edition of Rental Rates on Construction Equipment, published by the Canadian Construction Association.

- (d) Fuel: From manufacturers' data, assume .05 gallons per H.P. per hour. A 205 H.P. engine would consume  $(205 \times .05) = 10.25$  gallons per hour.

MTC assumes that 15 minutes of each hour would be lost in non-operating activities, when the engine would be turned off. Therefore, the actual fuel burned in one hour would be  $10.25 \times 3/4$  gallons.

At \$.65 per gallon, fuel cost per hour would be  $10.25 \times 3/4 \times .65 =$

5.00

Sub total

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11.11

- (e) Allowance for overhead & profit: Assume 10%
- (f) Wages & fringes: 1976 Provincial Zone labour rate for truck driver is \$4.50 per hour. Add 20% (\$.90) for fringes & down-time

1.11

---

5.40

Total rate you should get for operating your truck for 1 hour

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\$17.62

Actually MTC uses \$17.95 per hour.

STEP 1 - HOURLY RATE

Equipment models: International 1800  
Ford 800

Size: 48,400 lbs. 16 G.V.W.

Type: Tandem rear axle, gas

Factory list price	\$20,000
less 15% discount	<u>3,000</u>
	\$17,000
Add 7% Ontario Sales Tax	<u>1,190</u>
Total New Cost	\$18,190

To simplify matters, MTC estimates the various operating costs as a percentage of the new vehicle price. This is less cumbersome than trying to determine exact operating costs. It is also reasonable in the sense that as vehicle prices rise, the MTC formula assumes an automatic increase in maintenance and operating costs.

MTC assumes that the vehicle has an "economic life" of 5 years. In other words, after 5 years maintenance and operating costs would be high enough to offset lower bank charges, etc., and would warrant trade-in and purchase of a new vehicle.

Note that some costs are expressed as a percentage of "average investment". To understand average investment you must realize that if you purchase a truck new for \$18,000, then your investment that year in the truck is \$18,000. However, at the end of the first year it has depreciated through being used and is now worth, say \$13,000. You paid \$18,000 for it, but your investment in it is now down to \$13,000. The other \$5,000 was taken out in use, or "wear and tear".

Similarly the following year your investment will be down to perhaps \$9,000, the next year \$6,000, and so on.

Following an example through:  
New Cost = \$18,000.

	<u>Your Investment</u>	<u>Depreciation</u>
Year 1	\$ 18,000	\$ 5,000
Year 2	13,000	4,000
Year 3	9,000	3,000
Year 4	6,000	2,000
Year 5	4,000	

The average investment over those years =  $(\$18,000 + \$13,000 + \$9,000 + \$6,000 + \$4,000) \div 5 \text{ years} = \$50,000/5 = \$10,000$ . Thus, "on average" you had \$10,000 invested during the 5 years. This is about 56% of the new cost.

For its calculations, MTC uses a generally accepted figure of 60%, so average investment is 60% of \$18,190 = \$10,914..

STEP 2 - RATE PER TON-MILE

MTC does the following calculations separately for runs of 1 mile, 2 miles, etc. up to 20 miles. Only the 10 mile calculation is shown below:

Gross Vehicle Weight:	about 24 tons
Net Vehicle Weight:	16,400 lb. or about 8 tons
Payload:	12 cu. yard @ 2,700 lb. per cu. yd. = 32,400 lb. or about 16 tons

- (a) MTC now calculates the time required to drive this vehicle 10 miles. From engineering data they estimate a travelling speed of 27 miles per hour. Therefore, the time required is  $10 \div 27 = .37$  hours, or  $.37 \times 60 = 22.22$  minutes.
- (b) Similarly, the return trip speed would be faster, about 45 mph, and the time required would be  $10 \div 45 = .22$  hours, or 13.33 minutes.
- (c) Loading time is estimated to be 2.50 minutes per load.
- (d) Unloading time is estimated to be 2.00 minutes per load.
- (e) Other delay times, including slowing for turns, accelerating, etc., are estimated to be 3.00 minutes per load.

Total circuit time for a 10 mile run is therefore:

$(22.22 + 13.33 + 2.50 + 2.00 + 3.00) = 43.05$  minutes.

Thus the number of possible trips per hour is  $45 \div 43.05 = 1.04$  trips. (45 is used instead of 60 because MTC assumes that each hour will have only 45 usable minutes - i.e. 15 minutes for breaks and other delays)

Hourly production on a 10-mile run = 16 tons  $\times$  1.04 trips per hour = 16.64 tons per hour.

The hourly rate as calculated earlier is \$17.95.

Therefore, on a 10-mile run, the rate per ton should be  $\$17.95 \div 16.64$  tons = \$1.08 per ton.

MTC makes similar calculations for a one-mile trip, 2-mile trip, etc., up to 20 miles.<sup>15</sup>



Regardless of its complexity, the minimum rate process establishes only one rate or set of single rates which is applicable across Ontario. If an extension of that rate has one major weakness, it is that it does not allow for differences either in cost or in miles per run on a geographic basis.

The minimum rate is not applicable for urban areas where the average length of haul is very short although the time involved to complete the haul is lengthened because of traffic congestion. The marketplace demands, and truckers get, a higher rate in such situations. The Ministry of Transportation and Communications' low minimum rate has little relevance in such a market.

One brief to the Committee contained a detailed illustration where, if the trucker were operating at the Ministry of Transportation and Communications' minimum rate, a loss of 35¢ per mile would have been incurred on a particular Ministry job being tendered. (The contract was reported to have been awarded to a bid at less than the Ministry minimum.)<sup>16</sup>

Similarly, some have testified that the rate would be too high if made to apply in areas where runs are commonly 100 or more miles where there is little traffic congestion.<sup>17</sup>

Many criticized the Ministry of Transportation and Communications' minimum rate as too low. The Committee is of the view that it may be in certain cases, but if it were altered to reflect the highest cost

movements, then the rate would be far too high on lower cost movements.

A single rate, as a minimum, cannot be made to cover all cost movements in all locations across the province. It is equally impossible to make a rate which will cover all cost movements in one licensing Region. Taking any one of the five as an example, there are pronounced differences in terms of mileage normally travelled and time taken to complete the haul between selected locations. Within each Region there are major cities in and through which aggregate movements will be subject to higher costs and higher rates than longer movements in intercity runs.

The Committee is concerned about the effects of rates which are on a per-load or straight mileage basis. A trucker being paid on either basis is encouraged to cover the necessary distances as quickly as possible. Testimony was received about speeding dump trucks in municipalities, particularly residential areas. Complaints of this nature can be verified and are indicative of several regulatory problems, including inadequate truck routing by-laws in some municipalities, less than zealous enforcement of speed limit laws in some areas and the incentive to speed caused by per-load or per-mile rates.

The Committee wrestled with this problem because it realizes that per-load/per-mile rates do create a financial incentive to the trucker to produce at the highest possible level. While maximum efficiency must be viewed as one goal of regulatory law, the Committee is concerned that the benefits of such an incentive are offset to a large

degree by the dangers and annoyances that a speeding dump vehicle created for other citizens. The Committee is aware of the attitude of those who demand that truck transportation per-hour rates create a measurable disincentive to maximum efficiency over a given work period.

Neither of the extremes is particularly palatable to the Committee. A minimum rate is desirable in principle to assure, on Ministry of Transportation and Communications work at least, a fair wage to those who supply transportation. The minimum rates must be structured to allow total payments for a given movement which will reflect a wide range of cost considerations over very different routes. The sophisticated process now employed by the Ministry of Transportation and Communications to derive the minimums clearly attempts to do this, and on balance it succeeds.

Mileage must be a factor in the rates ultimately set and paid to a trucker for a movement. On the other hand, an hourly wage has advantages for the trucker and for the public in terms of promoting safer, albeit slower, movements.

The Committee would favour a minimum Ministry of Transportation and Communications rate which provided a base payment per hour, with further payments based on straight mileage or mileage groupings. Such a rate may maintain incentive while providing sufficient basic revenues to the trucker to encourage safer movements. Some base rate per hour

will make it in the best interest of the consignor to move the unloaded truck in, load it, weight it and dispatch it as quickly as possible.

#### 1.4.3 The Number of Truckers

This subject was discussed in Section 1.3 of this chapter. It is important to recall the current situation, that there appears to be too many dump truckers competing for too few jobs.

This must have a depressing effect on the price that a dump trucker can ask. Whenever there is oversupply, rates will be lower. If the Ministry of Transportation and Communications' minimum rates were increased and/or they were extended to all Ontario dump vehicle jobs, it must be assumed from the testimony submitted to the Committee that rates and profits would rise. Given the conditions of ease of entry from an investment viewpoint, more people would immediately be attracted to the industry. As costs of for-hire trucks increase, more aggregate producers and contractors would integrate into trucking. Demand for for-hire dump vehicles might well decrease during the period that more truckers were entering the business. An over-supply of vehicles would depress rates and nothing would be achieved. Conditions of entry and rates must be considered together.

#### 1.4.4 Associations and Rates

The Committee is concerned that representations to the Ministry or any branch thereof by individuals who allege that they represent large groups should be made in good faith. To this end, the Ministry should consider where appropriate, requesting from associations information such as the names and addresses of the officers, the names and addresses of the members, whether membership fees are paid or unpaid



for the individual members, the objects and the affiliation if any, with other groups or bodies within or without Ontario.

The Committee received from dump truck operators a great deal of testimony to the effect that associations of dump vehicle operators should be allowed to discuss rates and bargain with large users, municipalities and large contractors for example. Associations feel they cannot do this now. The recent noted investigation of the Greater Ottawa Truckers' Association by federal officials may support this view.

Many dump truckers made similar representations before the Ministerial Inquiry.

The Inquiry's report did not go as far as the truckers would have liked. The Report, after a discussion of Anti-Combines legislation concluding with the observation that "activities such as fee setting, unless they are sanctioned by valid legislation, will come under the prohibitions of The Act", stated:

It is further recommended that statutory authority be given for the establishment and operation of a provincial standards association which will enable trade associations to meet for the purpose of establishing standards or specifications in such areas as equipment, fuel, forms, accounting, credit facilities, conditions at pits or quarries, priorities and waiting time, safety practices, insurance limits, minimum performance standards for brakes, truck tires, ratio of gross weight to net horse power and other matters affecting the material interests of suppliers and users of dump truck transportation. <sup>18</sup>

The Government did not establish any legislation to sanction such an association. The Government took the view that an association to perform the tasks specifically outlined in the Inquiry's report did not need enabling legislation. Any group could form such an association (subject of course, to federal legislation and restriction of competition).

## 1.5 Weight and Loading Law

### 1.5.1 Shipper Responsibility

The Committee notes and endorses the concept of the provisions of The Highway Traffic Act which makes a consignor of goods liable, if he knowingly loads or causes to be loaded a vehicle so that when on a highway it is overloaded. However, it is the Ministry of Transportation and Communications' feeling that the section is unenforceable. The Committee is disappointed that the new section has not been tried in the courts. If the section is not sufficient to make shippers liable for overloads, the Government must re-evaluate its commitment to the principle of shipper responsibility and attempt to improve the legislation so that it works. As it is, the section is no more than a facade.

It is the Committee's opinion that the word "knowingly" renders the section unenforceable. The Committee has been advised of the difficulties of proving guilty intent in the courts.

The Committee will recommend strict liability on consignors for overloads where the total load is from one consignor.

### 1.5.2 Gross Loads

The Committee is given to understand that axle weight laws are generally unenforceable and that the situation is

currently being addressed by the Ministry of Transportation and Communications.

Because of the complexity of the axle weight law and the tendency of aggregate and sand loads in dump vehicles to shift so as to distort the load on an axle basis, the Committee favours strongly a return to gross-load limits and enforcement for dump vehicles. The current situation is aggravated by federal law which requires materials to be sold on a gross weight basis. This results in requirements for two types of scales, a problem which itself is compounded by the move to metric measurement. The Ministry of Transportation and Communications continues to weigh vehicles at a job site for gross load and not on an axle basis. Yet, axle weights are theoretically the law of Ontario. A recent proposal to return to gross loads was discussed by the Ministry of Transportation and Communications with representatives of the private sector. While the principle of a return to gross loads for dump vehicles carrying specific commodities had been agreed to earlier, the specifics of the proposal did not find favour with the industry. The Ministry of Transportation and Communications is again considering the matter. The Committee urges prompt action by the Government and industry to derive a satisfactory law that is understandable, enforceable and safe for both road users and highway infrastructure and which will not unduly limit load weight in comparison to the gross weights now achievable under axle weight laws.

### 1.5.3 New Law for Pit Operators

The Committee notes the recent report from the Ontario Mineral Aggregate Working Party to the Minister of Natural Resources. That report contains many recommendations regarding the licensing and responsibilities of pit operators. Pit owners and operators have many privileges and responsibilities. Some of these involve the way in which aggregate is transported from the pits and quarries on the highways of this Province. Any work done by the Government to review and implement the recommendations should involve the Ministry of Transportation and Communications.

The majority of pit and quarry operators are reputable and concerned businessmen, however, the Committee has received some testimony as to the unscrupulous treatment of dump truckers by some pit operators. The Committee cannot conclude that practices such as forcing overloads, forcing dump truckers to bid on work as they are lined up at pits in the morning and not providing safe premises for tarping after loading are common amongst the majority of pit operators, yet the Committee has heard that all of these practices do occur. Further licensing and financial responsibility laws through The Pits and Quarries Act, would have a salutary effect on the way in which the pit operators who are now only marginally responsible relate to those who transport their aggregate.



1.5.4 Tarping

The Committee heard a great deal about the tarping of loads. The Report of the Ministerial Inquiry into the Dump Truck Industry recommended that "loads on dump trucks should be covered by tarpaulins". 19

On July 25th, 1976, Ontario Regulation 632/76 was filed entitled "Covering of Loads" and being a regulation made under The Highway Traffic Act, it provided that:

- (a) "clear aggregate" means gravel, crushed stone or slag in the form of particles that are not less than 3/8 inch in diameter or more than 1 1/2 inches in diameter;
- (b) "registered gross weight" means the weight for which a permit has been issued under The Act, the fee for which permit is based upon the weight of the vehicle or combination of vehicles and load; and
- (c) "waste" means ordinary waste associated with municipal collection systems, including ashes, garbage, refuse and domestic waste.

2.-(1) Subject to subsection 2, where a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers is being operated on a highway and is carrying a load that is:

- (a) sand, gravel, crushed stone, slag, salt or any mixture thereof, where such substances are in the form of particles of up to 1 1/2 inches in diameter;
- (b) waste; or
- (c) shredded scrap metal,

the portion of the load that is not enclosed by the vehicle or load container shall be covered with a covering that is made of tarpaulin, canvas, netting or other material capable of confining the load within the vehicle container or load container.

- (2) Subsection 1 does not apply where the commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers is being operated,
  - (a) in the course of applying sand, salt, a mixture of sand and salt or any similar substance to the highway for the purpose of winter highway maintenance;
  - (b) in the course of collecting waste;
  - (c) in the course of carrying waste where the vehicle does not have a gross weight or registered gross weight in excess of 10,000 pounds;
  - (d) in the course of carrying a load that is not waste and the vehicle does not have a gross weight or registered gross weight in excess of 18,000 pounds;
  - (e) in the course of carrying sand, gravel, crushed stone or slag, of which not less than 90 percent is clear aggregate, where the highest point of the load does not extend above the top of the vehicle container or load container, and the perimeters of the load are not less than twelve inches beneath the top of the vehicle container or load container;
  - (f) in the course of carrying agricultural products, where such vehicle is owned by a farmer;
  - (g) on a highway with,
    - (i) an untreated gravel or crushed stone surface,
    - (ii) an earth surface, or
    - (iii) a surface treated solely for dust abatement purposes; or
  - (h) within the limits of a highway construction contract.
- (3) This Regulation comes into force on the 1st day of January, 1977.

The Committee heard during its 1977 hearings of the great problems this provision created in the winter months. Some pits had not built tarping platforms and tarping from the truck was dangerous. Some serious accidents were reported to the Workmen's Compensation Board and others occurred. The Committee was told as well of the higher costs created by the requirement. The arguments of net loss of productive time for the trucker and therefore, higher costs to both the trucker and to the pit operator if rates are paid on an hourly basis, are logical and must be recognized.

The Government, in response to the difficulties noted, amended the regulation in January of 1977. The amendment is as follows:

- (ea) In the course of carrying sand, gravel, crushed stone, slag, salt or any mixture thereof in December, January, February or March where the highest point of the load does not extend above the top of the vehicle container or load container, and the perimeters of the load are not less than twelve inches beneath the top of the vehicle container or load container;

The effect is to provide an option to tarping to dump vehicle operators carrying materials which would otherwise have to be covered. The Committee presumes the amendment will apply in future years and therefore endorses it.

The Committee does not believe that tarping will result in all movements of loaded dump vehicles being free of flying material when the vehicle is being operated on a highway. Loose aggregate will sit in the crevices of the load container and be blown off. Tires will continue to pick up shoulder stone or stone from the pit and throw it

into the course of following vehicles. Particles will continue to fall through loosely fitting tailgates. Tarping, even given the anticipated development of more sophisticated types, will not solve the dislodging load problem.

## 1.6 Dump Vehicle Inspection

### 1.6.1 The Program

The Committee has observed the new regulations which require dump vehicles to be inspected twice annually to operate on a full year basis.

A mandatory vehicle inspection program has been advocated by dump vehicle industry organizations, some individual truckers, and private citizens for years. Representations to this effect were repeatedly made to the Ministerial Inquiry. The Inquiry's Report strongly advocated a mandatory and periodic inspection program which would apply to all dump trucks.

Observations from the Ministry of Transportation and Communications' commercial motor vehicle inspection program supported the need for such a new dump vehicle inspection requirement. The broader and ongoing program is conducted at inspection stations where any commercial vehicle is subject to an inspection. In 1975, the Ministry inspected 3,103,984 vehicles for weight, dimensional and loading standards. In the same



year, 40,996 commercial motor vehicle fitness inspections were done, primarily at the inspection stations.

In the period October 12 to December 27, 1974, the Ministry's inspection program showed that 9.5% of the vehicles inspected were dump trucks - that is 1,091 straight dump trucks of 15,170 trucks and truck trailers inspected. The following table indicates the condition of dump vehicles compared with all vehicles inspected:

COVERING PERIOD OCTOBER 12 TO DECEMBER 27, 1974

System or Components	All Types of Trucks Tractors and Trailers		"Dump Trucks" with and without Trailers	
	No. of Vehs. Insp. 15170	% of vehicles found defective	No. of Vehs Insp. 1081	% of vehicles found defective
	Number of vehicles inspected having listed systems or components		Number of vehicles inspected having listed systems or components	
Sheet Metal (body)	15170	2.7	1081	4.9
Glass	11387	8.2	1081	11.2
Fuel System	11387	1.6	1081	2.2
Exhaust System	11387	5.6	1081	8.2
Lights and Reflectors	15170	48.2	1081	63.4
Steering	11387	14.3	1081	23.9
Suspension and Frame	15170	12.2	1081	15.1
Tires	15170	9.3	1081	14.8
Wheels and Rims	15170	3.2	1081	4.7
Brake - Parking	11387	4.7	1081	10.2
Brakes - Hydraulic	4512	6.4	431	14.6
Brakes - Air	10654	25.4	650	21.6
Pintle - Primary Attachment	603	5.3	62	9.6
Tow-Bar - "A" Frame	584	1.8	62	3.2
Cables - Chains - Attachments Secondary	584	42.2	62	61.2
Charges laid under H.T.A.	11387	1.4	1081	3.6
Removed from Service	11387	11.9	1081	13.9

Although the frequency with which dump vehicles detained was not much above the provincial average, the ratio of charges laid was 2 1/2 times the provincial rate.

In response to an identified need and specific area of safety so strongly advocated by those in the industry, the Government initiated a mandatory dump vehicle inspection program. Although no figures are available, the Committee is given to believe that the program has had a salutary effect on the condition of these vehicles.

The Committee supports the manner in which this program was initiated. If the results of inspection show that particular vehicle types have a disproportionate share of mechanical defects and therefore present an undue hazard to the motoring public, then specific programs should be tailored to the needs of the specific case.

The Committee notes, however, that the current program for dump vehicles does not include inspection of dump trailers. It also does not provide for an inspection of the load container on dump vehicles for serious defects which may result in loads or parts thereof becoming dislodged.

#### 1.6.2      Licensed Stations

The Committee heard several complaints during its hearings of the charges and practices of some licensed commercial motor

vehicle inspection stations. In the Ontario program, the station that is licensed to do the inspection is normally licensed to do any repair work that is necessary. This is not the case in some other jurisdictions where the inspecting agency and the repair agency must by law be separate entities. This appears to allow each to be objective and to lend integrity and credibility to the vehicle inspection program.

This is the case in Belgium for example. There, passenger vehicles four or more years old must be inspected once a year. Until recently all commercial motor vehicles had to be inspected twice annually. There is now a move to relax the requirement for commercial vehicles to once a year.

All vehicles inspected are examined at technical control centres, one of which was visited by the Committee. There are 60 stations with 186 inspection lanes and they are operated by 10 associations of private industry. They are self-funding operations although the Government does retain control over the setting of technical standards. There appears to be an excellent relationship between the inspecting agents, i.e. the industry, and the centres. The Belgian Government is extremely proud of this operation. The vehicle examinations are extensive and the facilities provided are excellent. Wheels are not removed, therefore, commercial motor vehicles and passenger motor vehicles can be inspected within about twenty minutes.



1.7 Salt

The Committee held one day of special hearings to inquire into the movement of salt in Ontario. Appearing to testify were:

Domtar Chemicals Ltd. (Sifto Salt Division)

The Canadian Salt Company Ltd. (Windsor)

Iroquois Salt Products Ltd.

Superb Truck Lines Ltd.

Island Transport Ltd.

The 1977 salt suppliers to the Ministry of Transportation and Communications were:

1. The Canadian Salt Company Ltd. - Chatham
2. The Canadian Salt Company Ltd. - London
3. Domtar Chemicals Limited - Stratford
4. Iroquois Salt Products Limited - Hamilton
5. Domtar Chemicals Limited - Owen Sound
6. Iroquois Salt Products Limited - Toronto
7. The Canadian Salt Company Ltd. - Port Hope
8. Domtar Chemicals Limited - Kingston
9. The Canadian Salt Company Ltd. - Ottawa
10. The Canadian Salt Company Ltd. - Bancroft
11. Domtar Chemicals Limited - Huntsville
12. Domtar Chemicals Limited - North Bay
13. Domtar Chemicals Limited- New Liskeard
14. Domtar Chemicals Limited - Cochrane

15. Domtar Chemicals Limited - Sudbury
16. The Canadian Salt Company Ltd. - Sault Ste. Marie
17. Domtar Chemicals Limited - Thunder Bay
18. Domtar Chemicals Limited - Kenora

The primary reason for holding a day of special hearings was to investigate charges made in previous hearings that there was an illegitimate relationship between one of the salt suppliers and the two transportation companies noted above. <sup>20</sup>

The Committee found no evidence of any illegal or untoward relationship between the salt supplier and the transportation service companies so accused.

Other subjects of general application were also addressed. The transportation companies are in fact brokerage companies and do not own any trucks. The issues surrounding the brokering of transportation services are not unique to either the movement of salt or to the dump truck industry and are examined in Chapter 3 of this Part of the Report.

In an area unrelated to the role of brokers, the testimony of one salt company was at odds with correspondence received by the Committee from a licensed trucker. <sup>21</sup> The trucker alleges that the salt company lowered the per-ton rate after a higher rate had been agreed to. The rates were allegedly changed after the transportation occurred.

This conflict raised the questions of whether the Ministry of Transportation and Communications minimum rates should apply to salt and what, if any, controls are possible on such post-transportation rate changes. The Committee's recommendations deal with the minimum rate concept.

Since the basic problem has the broader application to all freight movements, no all embracing solution is apparent other than making a consignor of goods responsible if a rate paid is other than the one filed. This would not affect class R operators if rates are not required to be filed.

One other area discussed at the noted hearings was the possibility of allowing heavier loads of salt to be transported during "freeze up" than are normally permitted in law. The Committee sought the comments of the Ministry of Transportation and Communications on this suggestion and finds it must agree with the Ministry's argument:

Trucks hauling pulpwood are permitted to exceed the normal maximum gross weight by 10% during the period when pavements are frozen. It is believed the reason for this privilege to "tree farmers" was to offset the reduction in payload caused by the buildup of ice and snow on logs during extraction and loading.

Extending this privilege to trucks carrying aggregates and salt presents a different picture considering the relative quantities of haulage. Annual movement of pulpwood is of the order of 11 million tons, while road movements of aggregates and salt is estimated at 115 million tons per year, a tenfold magnification.

While it is true that pavement damage due to heavier vehicle loads during "freeze up" is minimal, the same is not true of fatigue damage to bridges. During winter months, steel bridges particularly are more prone to load damage associated with brittleness. Increasing the frequency of heavier loads by 10 times during this period, may have serious consequences for bridges. Pavements too do not escape damage during the "freeze up", because it is extremely difficult to define the "freeze up" period.

There are many "warmer" days when the pavement surface has thawed but lower portions of the pavement remain frozen, and load associated damage occurs. Such periods are followed by the spring break-up period when many roads must have "half load" restrictions imposed to avoid pavement damage. There can therefore be considerable pavement damage if the "freeze up" period is not properly defined and adhered to by truckers. Again, the probability of pavement damage increases by tenfold if the 10% excess gross weight privilege is extended to aggregates and salt.

Extending this 10% excess gross weight to trucks carrying aggregates and salt is not recommended. <sup>22</sup>

## 1.8 Recommendations

The Committee recommends that:

1. The Government announce a moratorium for one year on the issuance of Class R licences.
2. The Ontario Highway Transport Board be permitted to issue licences in emergency situations.
3. The Ontario Highway Transport Board advise the Ministry and be in future in a position to advise the public of the number of dump trailers authorized by outstanding Class R licences as compared to other dump vehicle types.
4. During the moratorium, the Government review within one year the methods that exist and those that could be developed to forecast by region future demand for dump vehicles.



5. After the review contemplated by 4 above, the Ontario Highway Transport Board advise the Government as to the needs for future licences by region and, at the Government's publicly announced direction, lift the moratorium by region as the market demands.
6. The Ministry of Transportation and Communications with appropriate representatives from the private sector, establish a Ministry minimum rate with a base amount per hour and a variable amount per mile which may vary inversely with mileage.
7. The Ministry of Transportation and Communications minimum rates be extended to cover all dump vehicle movements in respect of Ministry construction contracts, including movements which are arranged by a subcontractor, as in the case of a pit operator supplying aggregates to a prime contractor at a price FOB the pit.
8. The Government review the existing practices of all ministries to see what action was taken as a result of the Cabinet directive to include the Ministry of Transportation and Communications minimum rate in all government contracts.
9. The Government require the minimum rates from 6 above for all Ontario Government construction contracts, where such extension has not taken place.
10. The Ministry of Transportation and Communications divulge on a confidential basis, the prices for new trucks it uses to calculate its minimum rates on an annual basis to designated representatives of any incorporated association representing truckers or aggregate suppliers.
11. Section 64a of The Highway Traffic Act be amended by,
  - (i) applying the current section (64a and b) to cases where the total load has been consigned by more than one person, and
  - (ii) by adding a further provision that applies to loads consigned by one person and applies strict liability on the consignor when the vehicle is on the highway and overloaded.

12. The Ministry of Transportation and Communications proceed with haste to derive with industry amendments to Parts VI and VII of The Highway Traffic Act making gross load laws applicable to dump vehicle movements in particular, the law be enforceable and weigh the needs for safety to road users and highway infrastructure against the economic benefits of achieving the highest appropriate load limits.
13. The Ministry of Transportation and Communications promote the dissemination of information about and lend its research abilities to the development of new, more effective and less costly load covering devices for all types of dump vehicles.
14. The Ministry of Transportation and Communications determine and make known to the owners of dump vehicles the feasibility of mandatory inspection of dump trailers.
15. The Ministry of Transportation and Communications augment the dump vehicle program by a requirement to inspect the load containers for defects likely to cause or allow a load or part thereof to become dislodged.
16. Section 68 of The Highway Traffic Act be amended by adding a new subsection to the effect that no person shall operate or permit or cause to be operated upon a highway any commercial motor vehicle or trailer designed in such a way that the load is carried in a container, rather than on a flatbed or float type vehicle, unless the load container is sufficiently well maintained and enclosed that no portion of a load described in "Covering of Loads" regulations may become dislodged through either of the four sides or the bottom of the container while the vehicle is proceeding on the highway.
17. Pit owners be legally responsible for provision of appropriate facilities for tarping at pits and quarries.
18. The Ministry of Natural Resources include the Ministry of Transportation and Communications in future discussions of recommendations flowing from the Mineral Aggregate Working Party's 1977 report.
19. Objective criteria be considered by the Board to simplify Class R applications and consistent with the Committee's comments in Chapter 3 - III regarding fleet size, the Board encourage new sources of supply rather than allowing an undue concentration of vehicles within a few firms.

PART VI - CHAPTER 1

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22. Ministry of Transportation and Communications, A letter from H.W. Adcock to B.B. Caldwell.

FIGURES & TABLES

Table 1	Trends in Class F - Source: Ministry of Transportation and Communications.
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## CHAPTER 2

### UNLICENSED FOR-HIRE TRUCKING

#### 2.1 Introduction

There are several methods by which a person or a group of persons can conceal a for-hire transportation service as something else and thus evade the requirements of current transportation regulatory law in Ontario.

At the time this Committee was established, it was alleged that substantial unlicensed, unregulated for-hire transportation existed. Why was there so much unlicensed for-hire transportation occurring and what should be done about it? These were clearly the fundamental questions which led to the formation of this Committee.

It is critical that one understand the nature and types of unlicensed for-hire transportation carriers which exist:

1. Carriers conducting movements or carrying commodities which are explicitly exempt from the law by the regulatory law itself;
2. Carriers conducting movements, carrying commodities or using vehicles which are implicitly exempt from regulatory law by the law, because the operation is not mentioned in the law;
3. Carriers operating wholly within municipal areas which are made exempt from the law by the regulatory law itself;
4. Truckers which own a truck but operate under the authority of another carrier licensed under the regulatory law;
5. People who are not specifically exempt in law from regulation but prepare documentation which makes it appear that they fall into one of the above categories. Often, such a person must conspire with others to achieve the total concealment.

Item 3 above (and the subject of private carriers who are also exempt from regulation) has been dealt with in Part III of this Report; items 1, 2, and 4 are dealt with in Chapter 3 of this Part. This Chapter concerns itself with category 5 above - transportation companies, services, carriers and others and the arrangements which they evolve in attempts to conceal or disguise a for-hire transportation service as a service of another kind.

## 2.2 Some Common Methods of Concealing a For-Hire Transportation Service - The Interim Report's Recommendations Reviewed.

### 2.2.1 Buy and Sell

As stated in the Interim Report:

The Committee does not generally subscribe to the buy and sell type of transportation arrangement which has the effect of camouflaging a for-hire transportation operation as private carriage. The Committee recognized at the same time that goods, particularly agricultural commodities, are bought validly by a trucker and sold by the trucker to whomever he can. The arrangement is not, however, subject to a direction by the "shipper" as to where the goods are to be "sold". While this need must be recognized, the nominal buy and sell transportation transaction must be eliminated.

The Committee recommended in the Interim Report that "a definition of for-hire transportation service include a carrier who buys goods from a shipper and sells them to a consignee at a price which reflects transportation expenses".

Buy and sell transportation arrangements which reflect only transportation costs in the price of the goods to the consignee, or do not involve a cash payment from the carrier to the shipper for the goods, or do not provide two bonafide bills of sale are in the Committee's view a for-hire transportation service.

Generally, for-hire transportation operations should be subject to The Public Commercial Vehicles Act.

A proper and enforceable definition setting out the principles of for-hire transportation should include the "nominal" buy and sell transportation arrangement.

The Committee has in mind several tests:

1. The primary business of the owner of the commercial vehicle. Is the owner engaged primarily in manufacture and secondarily in the distribution of his manufactured goods, or alternatively, is the primary business of the owner the carriage of the goods which someone else has manufactured?
2. Is the difference between the buying and the selling price of the goods being carried in the vehicle the approximate equivalent of the normal transportation charge?
3. Was there a cash payment from the carrier to the consignor?
4. Was there a bonafide bill of sale between the consignor and the carrier and the carrier and consignee?
5. Was there indication given by the consignor to the carrier regarding the name, location, etc., of the ultimate consignee?
6. Did the sale of the goods to the carrier and from him to the consignee require the remittance of sales tax and if so, was it paid?

These tests are not new. They have been evolved in Ontario as well as other jurisdictions. The Interstate Commerce Commission has delved deeply into this matter. Proper inspection, audit and enforcement, combined with the recommendations regarding shipper responsibility, will permit the detection of fraudulent transactions. The latter is most important as it allows proper enforcement.

The enforcement agency must have the cooperation of the Ministry of Revenue and other jurisdictions.

#### 2.2.2 Leasing

It is easy to confuse the term "vehicle leasing". In the Committee's view, "vehicle leasing", generally refers to a form of contract by which the owner of property (a vehicle) conveys the property for use on a temporary basis to another person for compensation.

The term is more than that single definition however. As is evident from current practice and from contemplated changes to The Bank Act, there exist at least two types of vehicle leasing. Those are:

1. The service or operating lease where the term is shorter than the life of the equipment and the lessor may assume responsibility for vehicle maintenance and for public liability and property damage insurance.
2. The financial lease where the term approximates the useful life of the equipment and is an alternative to debt for a firm wishing to finance the acquisition of capital assets.

This second type of lease is prevalent in Belgium where financial institutions, separate from the Banks, lease vehicles with the provision that the lessee will purchase the vehicle at the end of the period. The Belgian system has viewed the leasing institutions as part of the trans-



portation system and requires the institutions to obtain licences for the vehicles as if they were for-hire truck transportation operators.

The White Paper on banking legislation in Canada has proposed that chartered banks be allowed to engage in financial leasing of equipment. This proposal has caused some controversy amongst those who already lease vehicles, primarily automobile and truck dealers and leasing companies such as Ryder, Hertz and Avis.

The Federal Government is considering regulations which would prohibit the banks from inventorying vehicles, and would require the banks to acquire property only after a lease is executed. The regulations would prohibit the banks from having any responsibility for maintenance and from providing a lease other than on a full payout basis.

This discussion indicates the complexity of the apparently simple term "vehicle leasing". Of major concern to the Committee is the service or operational type of lease as described above. It is that type to which lessor services are often tied, and it is the extent to which services are provided which complicates further a definition of leasing.

Leasing is a loose term. It has no statutory definition. Its limitations are governed only by the extent of human relationships. The permutations and combinations of man and truck are endless. Possible arrangements which are referred to by some as leasing arrangements would include the following:

- (a) A allows B to use A's vehicle;
  - (i) with A's driver,
  - (ii) with B's driver,
  - (iii) with a driver obtained from C.
- (b) A has a Public Commercial Vehicle Licence to carry apples but B wishes to use A's vehicle to carry pears.

- (c) B has a Public Commercial Vehicle licence and registers A's vehicle in B's name
- (d) A allows B to use A's vehicle,
  - (i) for a single trip, one way;
  - (ii) for single trip, two ways;
  - (iii) for a period of one month;
  - (iv) for a period of five years.
- (e) A does not intend to use the vehicle again but will sell it either to B or to someone else at a later date (either 3 months or five years later)
- (f) A collects all or part of the revenue for the transportation service provided by B
- (g) A's name is prominently displayed on the vehicle
- (h) B's name is prominently displayed on the vehicle
- (i) the vehicle is a trailer, which moves by rail piggyback between Toronto and Montreal
- (j) B has a Public Commercial Vehicle Licence but no trucks. He obtains all of his vehicles from A.
- (k) A keeps control and custody of the vehicle which B uses to transport goods which belong to either (i) A, (ii) B., or (iii) C.
- (l) A is a (i) truck dealer, (ii) a consignor or consignee, or (iii) a transportation broker
- (m) the arrangement or contract between A and B is oral only. There is no written document
- (n) B allows C to use the vehicle for a limited or extended period of time.

The Committee dealt at length with this subject in its Interim

Report. The Committee stated in part:

The subject of leasing is a complex one, made more so by the ingenuity of those who devise camouflaging techniques to conceal the true for-hire nature of their transportation operation. The right to transport one's own commodities in one's own truck has been inviolate. Leasing is an alternative to purchasing a vehicle and is viewed so, not only in respect of commercial vehicles, but private automobiles as well...

Leasing companies indicate they provide an alternative to truck ownership, both for shippers and for for-hire carriers. One of the leasing companies testified that "70% of our business is derived from customers already owning their trucks...they do not always (lease) only because they can lease for less than they can own it....most of our long term lease customers use leased equipment because of 24 hour service, predictable cost, substitute vehicle availability....<sup>1</sup>

The above comments from the Interim Report and other testimony received by the Committee make it clear that the leasing of vehicles is a legitimate and economically significant process.

Unfortunately, the term "leasing" is often used in place of "vehicle leasing" and this has come to distort the valid activity which is connoted by "vehicle leasing". Leasing as a term used by itself conjures up a host of activities in the minds of those involved with the commercial movement of goods by highway.

The Public Commercial Vehicles Act has for some time described certain conditions by defining types of service which if provided would invalidate a lease regardless of its term or duration. In other words, if any of the conditions set down in Section 3(2) of The Public Commercial Vehicles Act are existing in or through an arrangement which on the surface purports to be an arrangement to lease a vehicle only, then the total service provided through the arrangement is "deemed" to be a for-hire service.

Section 3(2) of The Public Commercial Vehicles Act now states:

- (2) An arrangement or agreement shall be deemed not to be a valid lease of a vehicle for the purposes of this Act,
  - (a) unless it is in writing and sets out fully and accurately all the terms under which the vehicle is leased;
  - (b) unless the lessee acquires or exercises exclusive possession and control over the vehicle under the arrangement or agreement;
  - (c) where the lessor or his agent or servant engages or pays directly or indirectly the driver of the vehicle;
  - (d) where the lessor or his agent or servant in any way exercises any control over the driver in the course of his employment as a driver of the vehicle;



- (e) where the lessor of the vehicle or his agent or servant in any manner whatsoever assumes any responsibility for any goods transported by the vehicle, or
- (f) where the vehicle is the subject of more than one arrangement or agreement for its use during the same period of time.

"Leasing" and "trip leasing" have come to connote the provision of various ancilliary services in addition to the vehicle. For example, the lessor may provide directly or indirectly a driver for a vehicle, or he may provide cargo insurance. It is "vehicle leasing with other services" which has become the problem in Ontario, because the provision of particular services, when considered with the provision of the vehicle, add up to the same service that is offered to the public by a for-hire truck transportation company which is licensed under The Public Commercial Vehicles Act. The licensed for-hire carrier provides a consignor of goods with a vehicle, cargo insurance, and a qualified driver for the vehicle and moves the goods from A to B for price \$X. The consignor need have no concern for the vehicle or its movement. The agreement may be to move one load, or to move several loads on a continuing basis. An owner of vehicles who leases a vehicle to a consignor plus provides a driver, and moves the goods either on a one time or continuing basis from A to B for \$X, and who may agree to provide cargo insurance, results in the consignor having no responsibility for the vehicle in real terms and is a service which is virtually the same as that offered by the for-hire carrier.

The vehicle owner who leases a vehicle to a consignor and maintains it, for a price of \$X for either one trip or three months, is not the same as either of the persons described above. Missing is the lessor's control of the vehicle, the possible provision of freight insurance and the provision of drivers.

The term "vehicle trip leasing" refers to the lease of a vehicle to a lessee for a one way trip. An individual who leases a pick-up truck



to move his own household effects from say, Toronto to Collingwood, would be an example. Assuming the lessor has an office in Collingwood, the vehicle is dropped off there by the individual lessee. The vehicle may then be leased by the lessor to some other individual in Collingwood. The arrangement between individual A and the lessor is therefore for one trip only as it does not provide for the return of the vehicle to Toronto.

"Trip Leasing" of private automobiles is an everyday occurrence. However, in legitimate vehicle leasing operations, the lessor will generally apply a fee or charge in addition to the normal charges, where the vehicle is not returned to the origin. This is a common practice with lessors of both passenger cars and commercial vehicles.

The Committee, in its Interim Report, stated in part on vehicle trip leasing that:

The Committee has heard many representations regarding the activities of unlicensed carriers, but "trip leasing" has for us come to epitomize the problem. It is a symbol. We believe that there is nothing inherently unstable with a lessor leasing a vehicle to a shipper or carrier for a single trip, as long as no control exists over the driver, or put the other way, as long as the lessee takes full control of the vehicle for the duration of the trip. But this must be distinguished from a case where there is complicity between the lessor and the driver. It has been submitted to us that "there is nothing illegal about one way rental, regardless of vehicle size, as long as the supplier of the equipment does not supply the driver. So long as the driver and vehicle are thus separate, the legitimate shipper may legally choose one way shipments....the return of the vehicle to the 'point of receipt' is irrelevant as long as the 'driver pool' and the lessor are unrelated entities".<sup>2</sup>

The questions attached to the practice of trip leasing are particularly difficult to answer. The Committee made recommendations in the Interim Report which are restated in Part III, Chapter 3 of this Report, to the effect that trip leasing of vehicles and drivers between licensed carriers should be permissible and promoted when it is to the advantage of shippers and carriers.

Bill 4 was an attempt to provide that regardless of the conditions in 3(2) whether or not any related services are provided, a vehicle cannot be leased for a one way trip. See Appendix W for Bill 4.

The Committee stated in the Interim Report that:

Bill 4 has been referred to and represented an attempt by the Government to make two-way trip leasing (of vehicles) illegal. The amendment would have required that a valid lease must provide for the return of the vehicle to the place from whence it was leased...

This action was seen necessary not because vehicle trip leasing was a bad thing but because it often involves the provision of further services as outlined in 3(2) and because the provision of those services is difficult to prove. Those persons involved were not made subject to prosecution as easily as they would have been in the presence of Bill 4.

The Committee, moved by the thought that there was nothing inherently unstable about a vehicle trip lease per se, attempted to view the matter in the broader context. Was there any reason to outlaw a potentially viable economic activity if other provisions could be strengthened to allow effective enforcement?

The Committee felt that trip leases between a carrier and a shipper would be detrimental to the regulatory system. A for-hire carrier, in the Committee's context is any person who offers a truck to a consignor and at the same time provides drivers, cargo insurance, terminals or controls or influences the movement of the vehicle. The Committee continues to endorse this position.

The Committee has concluded that regulatory law must be enforceable if the system is to work, and regards the benefits of effective regulation as outweighing the disbenefits of making illegal trip leasing of commercial motor vehicles. Trip leasing of large commercial motor vehicles must be made contrary to the law of this Province, to complement the other significant regulatory initiatives recommended in this Report.

## 2.3 Methods of Dealing with the Growth of Unlicensed For-Hire Trucking

### 2.3.1 Sales Tax

At present, the Retail Sales Tax Branch of the Ontario Ministry of Revenue has taken the position that a "sham" lease is not a lease for the purpose of collecting sales tax. The official interpretation is as follows:

There are truck operators who do not hold Public Commercial Vehicle licences, but provide haulage services similar to those provided by Public Commercial Vehicle licence holders.

These operators have entered into written agreement with their principals for the lease of transportation equipment in an attempt to meet with the terms of The Public Commercial Vehicles Act.

In the past, the Branch has viewed such agreements as true leases resulting in the registration of these trucks as vendors and they charged and collected tax on the rental of transportation equipment.

The Branch now has a legal opinion which states that a lease agreement that is not operated as a true lease but was only entered into to meet the terms of The Public Commercial Vehicles Act is in fact the provision of a haulage service.

An operator who provides a truck haulage service is required to pay tax on the purchase of equipment and repair parts but is not required to charge and collect tax on the provision of such service.

Our District Offices were instructed to contact truck operators in their district and explain to the operators who had entered into "sham" leases that their vendor permits would be cancelled as there is no requirement to charge and collect tax on the provision of haulage service nor on the "rental" charge made under these circumstances but tax must be paid on the purchase of equipment and parts. <sup>3</sup>

#### 2.3.2 Drivers and Driver Pools

The Committee examined the provision of drivers in connection with the leasing of vehicles. The Interim Report stated that there must be no relationship between driver suppliers and truck lessors. Further, the lessor must have no control or influence over the selection of drivers in any leasing arrangement.



The Committee used the term "control" in the same context as it is used in 3(2)d of The Public Commercial Vehicles Act. Control or influence can manifest itself by the lessor or his agent or servant engaging or paying directly or indirectly the driver of the vehicle. As such, one further specific meaning of these words is in the context of 3(2)c.

The lessor must not have control or influence over a driver. He must not compel, entice or require a lessee to use a particular driver or one from any particular source. He must not lead or direct or cause a lessee to hire a driver or one from any particular source.

To complicate this otherwise simple situation, the Committee received oral testimony with which it agrees, that driver experience, competence and perhaps incentive are important aspects of the lessors' interest in their equipment. <sup>3a</sup> The Classified Driver's Licence System will assist lessors in the pursuit of this interest because it is designed "to match up the driver's skills, fitness and responsibilities with the kind of vehicle being driven". To qualify for a driver's licence, Class A, C, D or F "medical reports and vision screening are required....(in addition) employers will be asked to certify on a form that their drivers have the experience to drive the vehicles in the class being applied for....also a driving test is mandatory".

Before being certified the driver must know how to place, secure and distribute loads, how to inspect his vehicles, special characteristics of his loads, etc. Holders of Class A, B, C, E or F driver's licences are also subject to periodic medical and vision screening.<sup>3b</sup>

Having specified these basic principles of lessor driver separation, the Committee went further to recommend the registration of lessors and driver pools. While registration would not prevent lessor-driver pool relationships, it would assist enforcement through identifying and by granting to the pools and lessors something which indicates that it is a privilege to operate in Ontario. If that privilege is not carried out within the law, the privilege may be taken away. This concept is explored more fully later in the chapter.

Given what appears to be a common relationship between driver pools and lessors and the ephemeral nature of some driver pools, the Committee's commitment to the registration process has strengthened.

The Committee stated in the Interim Report:

The Ontario Trucking Association commented, "of the driver pools reporting to the Workmen's Compensation Board, we have been able to identify sixty-seven whose principal is directly related to or works for another individual engaged in vehicle leasing".<sup>4</sup>

(The total number of driver pools investigated was one hundred and seventy-four).

We suspect that there are many more cross-relationships in existence, and would not be surprised to find that some of the same relationships exist in the for-hire industry which is becoming more and more involved with leasing itself. Whether this is true or not is not important. These cross-relationships wherever and however they might exist, destroy the principle of true vehicle leasing and must not be allowed to continue.

Since the Interim Report, the Workmen's Compensation Board has reviewed the status of driver pools and stated:

There are presently 164 active driver pools registered with the Board.

The listing of the 174 driver pools identified by the O.T.A. included 34 driver pools that are now out of business. In addition the listing included 32 firms for which we have no record: 7 of the 32 are located in Montreal and apparently not operating in Ontario. The remaining 25 are not listed in the local telephone directories and would not appear to be active. These will be investigated locally when our auditors are working in the areas. 5

### 2.3.3 Registration of Lessors

The Committee recommended in the Interim Report the "registration of lessors who supply power equipment to insure that they remain suppliers of vehicles and that they do not undertake to provide transportation". The Committee would alter this recommendation by requiring lessors of all commercial vehicles to register. The Committee would acknowledge as it did with respect to the registration of driver pools, that no law will prevent all illegal activities. A law will, if well conceived and properly enforced, discourage them to a greater degree. The Committee believes that the power and ability of the Ontario Highway Transport Board to review the performance of persons registered under The Public Commercial Vehicles Act as recommended herein will have a salutary effect on the activities of both driver pools and commercial vehicle lessors.

The Committee has been asked whether in its view all lessors should be registered. The questions were on the basis that financial institutions, truck manufacturers and truck dealers are amongst those who lease commercial vehicles. While this is not the group to whom the original recommendation was addressed, the Committee believes that identification of all lessors is necessary.

#### 2.3.4 Shipper Responsibility

In attempting to strengthen further the provisions of The Public Commercial Vehicles Act, particularly those with respect to leasing, the Committee recommended in the Interim Report that legislation be passed to require liability and responsibility on a shipper who engages a trucker who is unlicensed.

The concept of shipper responsibility was discussed in Part II Chapter 7 of this report, under the topic of enforcement. Readers are referred to that discussion, and to Chapter 1 of this Part which deals with shipper responsibility for overloads in the context of dump vehicles.

#### 2.3.5 Other Services With a Lease

The Committee was asked whether a lessor should supply cargo insurance for a load carried in the leased vehicle. The Committee thinks not. Existing Section 3(2)e of The Public Commercial Vehicles Act invalidates a lease where the lessor or his agent or servant in any manner whatsoever assumes any responsibility for any goods transported by the vehicle. The Committee interprets the provision of cargo insurance or cargo handling, warehousing, sorting etc. to be forms of control over the goods and this supports the principle of the existing prohibition.

The Committee has found the approach of Section 3(2) somewhat confusing. An alternative approach would be to define what a lessor



may and may not do. The services that a lessor may provide could be so defined.

#### 2.3.6 "Grandfathering" of Some Unlicensed Truckers

Having reviewed some common methods of circumventing The Public Commercial Vehicles Act and made recommendations designed to strengthen the provisions and spirit of The Act, the Committee dealt in the Interim Report with the question of unlicensed carriers.

The Committee noted the attempts to resolve this problem by legislation. Bill 4 is one example. Regardless of the efforts to legislate, the Committee noted that:

There is undoubtedly a very large amount of goods being transported for compensation in vehicles which are not licensed under The Public Commercial Vehicles Act of Ontario.

The Committee reviewed evidence from the Ministry of Transportation and Communications and from unlicensed and licensed carriers. To all licensed carriers, the unlicensed carrier is anathema.

The Ontario Trucking Association commented on its assessment of the impact of unlicensed carriage:

In terms of Ontario, where the regulated industry had a gross revenue of 1.2 billion dollars in 1974...we have estimated the loss at 10% or \$120 million of gross revenue to unlicensed carriage...(which may include losses to bonafide private operations). <sup>6</sup>

The Committee went on in the Interim Report to note that:

The same association stated in its brief that the freight moved under these conditions is "confined to high volume, high load factor traffic".<sup>7</sup> The Association and virtually all licensed carriers take the view that "the loss of the very substantial revenues, which we estimate have been lost to illegal operations ...is a matter of serious concern not just to the regulated for-hire carrier industry, but to the public of this Province who depend upon for-hire truck transportation for the carriage of goods....failing the unlicensed operator whose interest does not run to the carriage of less attractive freight."<sup>8</sup>

The Organization of Independent Truckers stated:

(Our members) provide service to Ontario shippers outside the scope of the licensing provisions of The Public Commercial Vehicles Act. The members of the Organization of Independent Truckers provide trucking services either by leasing their trucks to shippers sometimes on a one-way haul, or by purchasing the goods to be transported...and selling them to the ultimate purchaser of the goods....

The Select Committee must ask itself - the Organization of Independent Truckers continues, why the number of independent truckers in Ontario has grown so large. Why, if the estimate of the Ontario Trucking Association is correct, are independent truckers carrying over \$80,000,000 of freight every year in Ontario?<sup>9</sup>

The Committee noted in the Interim Report the testimony given in Pembroke by one licensed carrier,

that he lost freight to an unlicensed carrier. Rather than let it continue, he, as a licensed carrier "ran a sale" and undercut the price offered by the unlicensed carrier. This tariff was not filed and hence the licensed carrier was breaking the law. The result, however, was that the unlicensed carrier moved on; the licensed carrier regained the freight and eventually set a tariff higher than his "sale" price, but lower than what had been the tariff originally.<sup>10</sup>

The point at issue is "the Committee's view that licensed carriers are also in some cases breaking the law by cutting tariffs, by trip leasing, etc., to compete with the unlicensed carriers".

The Committee concluded that "a situation which breeds a disrespect for a law, the principles of which we believe to be in the public interest, cannot be allowed to continue".

The Committee therefore recommended that:

1. Existing unlicensed carriers should apply for certificates to the Ontario Highway Transport Board within a prescribed period of time.
2. Applications should name the shippers being served, the commodities being carried, the points of origin and destination, the number of vehicles now being used, and the length of time that the applicant has performed these services.
3. (a) Applications will not be considered from anyone commencing business after October 1, 1976. This is the "grandfather" date.  
  
(b) Records in support of applications must show that service has been established for a period of not less than two years prior to October 1, 1976.
4. The applicant should also supply evidence of financial ability to carry on the business; of vehicles meeting prescribed safety standards and of the rates to be charged.
5. The applicant shall supply records of employment and the relationship with dependent contractors, to the Ontario Highway Transport Board and these records shall be considered prior to a decision being made.

The Interim Report went on to say:

When the above action has been taken, the Ontario Highway Transport Board will, after due notice by publication in the Ontario Gazette, issue certificates of temporary authority which will be reviewed approximately one year later. If the applicant complies with the relevant provisions of existing laws, he will then be given permanent operating authority.

The Committee commented on these recommendations in the Interim Report, in part as follows:

The situation is such as to call for early action by this Committee. Before making our recommendations, we have expended time and effort in hearing all sides of the debate. We have also invited the opinions of experts and others from western Canada, the United States, England and Australia. We are continuing to study the problem, but have deemed it appropriate to report at this time.

In reaching our conclusions, we have searched for a method which will be fair, prompt and effective. It should aim at an orderly conversion from unlicensed to licensed carriers. It should place responsibility on shippers as well as carriers. It should aim at discouraging overloading, speeding, long hours of driving, accidents, misrepresentation and evasion.

We understand that similar, but not identical, situations have confronted the Ministry in the past. Produce haulers, carriers of heavy machinery and carriers operating extra-provincially all operated without licences for periods of time. Months elapsed between the introduction of relevant regulations and the ultimate licensing of the affected carriers. During that interval, there was, as here, a "gray" period in which unlicensed carriers could and did operate on Ontario highways.

These recommendations caused more stir than any others. The Committee was not surprised by the reaction. The proposed process was an objective process based on hard realities, a process which might well revolutionize the for-hire trucking industry in Ontario. Because of the nature of the recommended process, further comment is warranted.

No precise definition of public necessity and convenience is offended by these recommendations. On previous occasions, past performance has been accepted by the Board and its predecessor as proof of public need. One need look no further than Class R grandfather provisions.



Classes of licences are now defined in the regulations issued under The Public Commercial Vehicles Act and no additional class of licence was or is contemplated for unlicensed carriers. In other words, the class of licence will depend upon the application, the communities to be served, the commodities to be carried and the service to be provided.

In the application and hearing process, it should be clear that cessation of service to the public for a prolonged period of time cannot be accepted as evidence of a continued need for transportation.

There appeared in many submissions to the Committee after the Interim Report an erroneous impression that the Committee was seeking to reward illegality. The Committee regrets such an assumption. The emphasis is on the provision of a transportation service in response to public demand over a period of time, by applicants with financial strength who are cognizant of safety standards and have had satisfactory past relationships with employees and owner-operators; in other words, those that are fit, willing and able and have proven themselves to be. The Committee cannot be drawn into a position of condoning violation of the law.

Recommendations in the Interim Report dealt with licensed transportation. The Committee sees a distinction between "unlicensed" and "illegal" carriers.

To qualify for authority under the provisions set out in the Interim Report, an applicant must demonstrate service for a period not less than two years prior to October 1, 1976. The applicant must

therefore have commenced business prior to October 1, 1974. No one commencing business either within those two years or after October 1, 1976, is included. Obviously, the provisions apply only in these cases.

To implement these recommendations, the Committee does not see any necessity for a radical change to the concept of issuing authority to persons who can show a need for their past or proposed transportation service.

This process would include the ability of others to respond to an application as to its accuracy. The Committee does not contemplate objections based on necessity or convenience of the applicant's service, or on the foreseen impact on other carriers.

#### 2.4 Registration

The Committee has recommended the registration of lessors, driver pools and, in the next Chapter, brokers of transportation service. The Committee uses the term registration as opposed to licensing to describe a less arduous and more objective process.

The Interim Report stated clearly that registration should take the form of sworn affidavit evidence including a declaration of the principles of the company being registered.

The process foreseen by the Committee will

- obtain information for record purposes,
- require notice of material changes,
- allow cancellation of registration under certain circumstances,

- encourage registrants to govern themselves by establishing a code of ethics, a clearing house for complaints and recommending further changes in registration requirements.

The registration concept is broadly used in motor vehicle administration. As the Committee reads The Highway Traffic Act, motor vehicles in Ontario are not licensed, they are registered. The registration process involves the issuance of a permit and a number plate and a right to refuse to issue or to cancel. Operation without a permit is prohibited.

A person registered under The Public Commercial Vehicles Act, given the necessary amendments would be entitled to conduct a specified business in Ontario. It would be an offence to conduct such businesses without being registered - an offence easier to prove than unlicensed for-hire transportation. Also, provisions of registration imply that the registration may be cancelled or suspended if conditions of the registration are not met. Where such action is proposed, hearings would be held by the Ontario Highway Transport Board to disclose the facts relating to contraventions of transportation law.

## 2.5 Conclusion

The recommendations which follow include those from the Interim Report expanded where applicable based on the Committee's activities since September 30, 1976.

## 2.6 Recommendations

The Committee recommends that The Public Commercial Vehicles Act be amended to provide:

1. An offence for any person who knowingly engages a for-hire truck transportation service which is not properly licensed or registered as required by The Public Commercial Vehicles Act or Motor Vehicle Transport Act or who knowingly conspires or assists in the contravention of any other provision of the two Acts.
2. An improved definition of for-hire carriage to include a "buy and sell" transportation service or to exclude it from a definition of private carriage.
3. The Committee's recommendation in Chapter 3, Part II be adopted regarding trip leases of vehicles and drivers between two licensed carriers.
4. All concerns which are in the business of leasing commercial motor vehicles shall register with the Ontario Highway Transport Board.
5. The applicant for registration as a lessor provide to the Board all information required to be filed which will include evidence as to,
  - (i) name, address and telephone number of the company,
  - (ii) directors of the company,
  - (iii) standard form of contract and may include
  - (iv) further details of the operation as to whether he is doing business or proposes to do business only with licencees under The Public Commercial Vehicles Act and The Motor Vehicle Transport Act; whether the lessee has the right to purchase the leased equipment; whether the lessee will display on the vehicle the name of the lessor; the method and frequency of compensation for the use of the vehicle; whether the lessor exercises control over the selection or discharge of the drivers and if so, the extent thereof and how they are paid; whether sales tax is paid or to be paid or exempt; whether lessor or lessee is responsible for the maintenance, fuel, insurance, registration under The Highway Traffic Act of Ontario and payment of statutory penalties.

The registrant shall undertake to refrain from holding himself out to conduct the business of transporting.



6. All driver pools shall register with the Ontario Highway Transport Board.
7. The applicant for registration as a driver pool shall provide to the Board all information required to be filed which will include evidence as to,
  - (i) name, address and telephone number of the company;
  - (ii) the directors of the company;
  - (iii) standard form of contract between the driver pool and its drivers and/or the method of payment;
  - (iv) names of the owners of the commercial vehicles utilizing the driver pools shall be supplied monthly;
  - (v) the names of the drivers, their addresses and the number and classification of their driving licences under The Highway Traffic Act.
  - (vi) the trips taken by the drivers, showing the origin and destination, date of departure and return and, where known, a description of the goods carried.
8. A registered driver pool shall insure that payments to the Workmen's Compensation Board are made in respect to all its drivers.
9. Driver pools shall file with the Ontario Highway Transport Board a monthly statement on activities in the preceding period as to the information outlined in 7.
10. There shall be attached to each report a declaration signed by the owner or operator of the driver pool to the effect that,
  - (i) he has no interest, directly or indirectly in the vehicles which are to be driven by the drivers of the driver pool,
  - (ii) he is not engaged in the business of transportation, and
  - (iii) to the best of his knowledge, information and belief, the activities of the drivers are not related to violations of The Public Commercial Vehicle Act and the regulations thereunder.

11. All registered driver pools and lessors be subject to audit by Board inspectors (See also recommendations in Chapter 7, Part II).
12. All registered driver pools and lessors be subject to Section 7 of The Public Commercial Vehicles Act.
13. The information which will be required to be filed by registrants should be established in regulations under The Public Commercial Vehicles Act.
14. Registrants as lessors or driver pools shall undertake to:
  - (i) limit advertising and other information published as a result of this registration, to a statement of the registration number. The registrant shall not state or infer that approval has been given by or on behalf of any Board or Ministry of the Government of Ontario;
  - (ii) notify the Ontario Highway Transport Board of any material changes in the particulars furnished on the application for registration. Such notice shall be given within 15 days following the effective date of any change of particulars;
  - (iii) observe the provisions of Section 15(c) of The Public Commercial Vehicles Act on the same terms and conditions as if the registrant held an operating licence under the said Act;
  - (iv) withdraw the registration if and when the applicant ceases to do business in Ontario;
  - (v) state the names and addresses of other parties having an interest in the ownership, management or profit of the business, by way of joint ownership, partnership or stock or other interest in a corporation.
15. Each vehicle leased by a registrant shall carry with it a copy of the lease and the lessor's registration permit at all times that such vehicle is operated under the lease.
16. Unlicensed for-hire carriers should apply for certificates to the Ontario Highway Transport Board within a prescribed period of time.
17. Applications under 16 above should name the shippers being served, the commodities being carried, the points of origin and destination, the number of vehicles now being used, and the length of time that the applicant has performed these services.

- 17.(1) (a) Applications will not be considered from anyone commencing business after October 1, 1976.  
  
(b) Records in support of applications must show that service has been continuous for a period of not less than two years prior to October 1, 1976.
  - (2) The applicant should also supply evidence of financial ability to carry on the business; of vehicles meeting prescribed safety standards and of the rates to be charged.
  - (3) The applicant shall supply records of employment and the relationship with dependent contractors to the Ontario Highway Transport Board and these records shall be considered prior to a decision being made.
  - (4) Applicants shall show that arrangements have been made for Workmen's Compensation payments in respect of all non-office employees.
  - (5) Opposition to such applications may only be based on the accuracy and validity of the information required by the application or by the Board.
18. The Public Commercial Vehicles Act be amended to make illegal the lease of a large commercial motor vehicle unless the lease or arrangement provides for and results in the return of the commercial motor vehicle to the place of receipt of the vehicle by the lessee. The above amendment coincide with the giving of all decisions by the Ontario Highway Transport Board in all hearings arising from recommendations 16 and 17 above.
- The amendment not inhibit vehicle trip leasing arrangements between two licensed carriers as recommended in Part III, Chapter 3 of this Report.
19. Contracts for the leasing of commercial motor vehicles shall be filed with the Board by the lessor.

## PART VI - CHAPTER 2

### REFERENCES

1. Ryder Truck Rental Ltd., Brief, Page 2 and 3.
2. Ibid, Page 8.
3. Ministry of Revenue, A letter from the Manager, Tax Advice and Information, dated July 24, 1976.
- 3a. Op Cit., Ryder, Brief.
- 3b. Ministry of Transportation and Communications, Guide to Ontario's Driver Certification Program.
4. Op Cit., The Ontario Trucking Association, Brief #1, Page 47 and Appendix 18.
5. Workmen's Compensation Board, A letter form the Chairman to B.B. Caldwell, February 1977.
6. Op Cit., The Ontario Trucking Association, Brief #1, Page 45.
7. Op Cit., The Ontario Trucking Association, Brief #1, Page 44.
8. Op Cit., Tbe Ontario Trucking Association, Brief #1, Page 47.
9. Op Cit., Organization of Independent Truckers, Brief #1, Page 1.
10. Mr. Brent Humer, in Oral Testimony to the Committee, August 26, 1976.



## CHAPTER 3

### EXEMPT MOVEMENTS & EXEMPT TRANSPORTATION SERVICES

#### 3.1 Freight Operations in Automobiles

At present the movement of goods for-hire by automobile is exempt from regulation under The Public Commercial Vehicles Act. The Act applies only to commercial vehicles as defined in Section 1 (ab); Section 1(d) and Section 1(ab) together exclude automobiles from that definition.

The practical result of the exemption is that carriers using small vans or station-wagons to carry freight must obtain a Public Commercial Vehicle licence and abide by its requirements, while a direct competitor serving the same market but using automobiles (often substantially modified to accommodate freight) need not do so.

The Committee has stressed the fundamental principle that control over one segment of a regulated industry without control over all significant segments is unjustifiable.

Freight moved in automobiles is significant in volume as a competitive element, particularly in the small shipment field. The Chairman of the Ontario Highway Transport Board estimated over 3,000 cars in use.<sup>1</sup>

There is no logic and there is potential harm in regulating one carrier and not his competitor.

Unknowing users of the unregulated automobile carriers have none of the protections built into the regulated industry; for example, there are no requirements placed on the carrier in respect of:

- (i) standardized bill of lading,
- (ii) published tariffs,
- (iii) cargo insurance, or
- (iv) continuity of service.

The Committee recognizes that it would be unfair to interfere with the continuation of automobile freight operations established prior to and operating at the date of publication of this report.

"Grandfather" status should be recognized and protected by the grant of Public Commercial Vehicle privileges strictly limited to the nature and scope of operations at this cut-off date.

New entrants after the cut-off date should be subject to the normal requirement of public necessity and convenience contained in The Public Commercial Vehicles Act. Similarly, expansions (for example, addition of new service territory) or alterations, (upgrading of freight capacity by switching from automobiles to vans) to grandfather operations after the cut-off date must meet the same test of public necessity and convenience.

### 3.2 Tow Trucks and Licensing

As a result of public complaints and trade commentary received by the Committee, a review of the tow truck industry has been carried out to determine if any aspect of the industry practices and standards is detrimental to the public interest, and whether it would be to the public advantage to implement a form of licensing or control of tow truck business operations.

Currently, there is no provision in either The Municipal Act or The Regional Acts specifically authorizing the regulation or licensing of tow truck businesses or operators, nor is there any provincial control.

It should be noted, however, that 115 applications from operators of tow trucks were heard during the years 1969 to 1976 for licences under The Public Commercial Vehicles Act. For various reasons, such applications have not been dealt with. It is unreasonable to delay further a disposition of these applications.

The Committee is aware that the Ministry of Transportations and Communications is reviewing the matter of tow truck regulation at the time of writing and staff-level discussions have occurred between the Committee and the Ministry. Although the concerns are mutual the conclusions on how best to approach the matter may differ.

The demographics of the industry follow the pattern of vehicle population in the province, thus approximately 80% of the industry is located in the urban centres. There are two broad classes of towing demand:

- (a) Passenger cars and other light vehicles,
- (b) Heavy commercial vehicles and buses.

There are four types of operator categories:

- (a) Large trucking and bus companies who own their own towing equipment;
- (b) The dedicated operator who typically has a fleet of tow trucks of light duty category and at least one unit with heavy commercial capability (probably with towing contracts to bus and commercial trucking companies);
- (c) The operator with towing as an adjunct to another business (body shops, service stations, etc.);
- (d) The freelance tow truck operator who relies on automotive trades for referred business or partly or wholly on opportunistic "cruising" and monitoring police radio and CB wave bands.

Mechanical fitness of tow trucks appears to vary with the type and prosperity of the operator. During the operation of vehicle inspection safety lanes of the Ministry of Transportation and Communications, it has been the practice of freelance operators to cruise the locations for business. It has been necessary in some cases to remove plates from the tow trucks which were found to be mechanically unfit.

Tow truck companies have great difficulty employing experienced help and they believe that the standard of untrained employee available



to them increases the risk of accident and towed vehicle damage during recovery and transport.

There is some concern that freelance operators do not carry adequate public liability insurance. Police authorities report the unauthorized collection of "abandoned" vehicles by tow truck operators who cannot be traced due to inadequate identification of tow vehicles.

It is reported by both trade and public that the more opportunistic tow truck operators over-charge for services when the vehicle owner has no choice but to accept the quoted charge. In emergency situations it is common for the owner to be unaware of the charges until the service has been performed.

Many police authorities have agreed fee schedules with towing companies used by them for accident and other work. However, problems do arise whenever a "cruising" tow truck arrives at an accident scene before police or the approved service equipment.

It is the practice of tow trucks to rely upon the rotating roof beacons for warning of vehicle under tow. In many cases where the towed vehicle is electrically disabled, no warning mark or lights are fitted.

There appears to be some lack of self discipline within the tow truck industry and a sufficient diversity of interest levels to suggest it would be to the public advantage to provide a degree of structure and control.

The optional courses which were examined by the Committee included:

- mandatory annual safety inspections for tow trucks, specifying minimum driver age, conditions of tow truck operations, lighting and identification under The Highway Traffic Act;
- control of safety and use-related aspects of operations under the Highway Traffic Act, and
- the licensing and control of tow truck operations under The Public Commercial Vehicles Act to control all aspects of operation.

The Committee is aware that many of the problems created by those less responsible tow truck operators occur within municipal areas, and the resulting problems are consumer oriented. There appears to be little interest to regulate these operations at the municipal level.

The Committee has subscribed to the benefits of regulation of the for-hire goods movement industry and is of the opinion that under current law, tow trucks should require a Public Commercial Vehicle licence to operate while towing between municipalities. Regulation by the Ontario Highway Transport Board would provide protection to the public and an ability to improve the tow truck industry. Towing particularly on a highway, requires special equipment, special knowledge and a high degree of responsibility.

The Committee concludes that tow truck operations should be licensed under The Public Commercial Vehicles Act.

### 3.3 Cartage

The Committee's recommendations with respect to the exemption from regulation under The Public Commercial Vehicles Act for movement within urbanized areas are contained in Part III, Chapter 6 of this Report.

### 3.4 Private Carriage

The Committee's recommendations with respect to the exemption from regulation under The Public Commercial Vehicles Act for movement in a vehicle owned or leased by the owner of the goods are contained in Part III, Chapter 4 of this Report. The Committee recommends no change to the exemption of private truck transportation movements from economic regulation.

### 3.5 Products of a Farm or Forest Which Are Transported From the Farm or Forest

Such movement of such products is currently exempted from economic regulation by Section 2(2) of The Public Commercial Vehicles Act.

The Committee has examined this exemption and the methods of exemption employed by the Interstate Commerce Commission. The Committee recommends no change to the current Ontario exemption.

### 3.5.1 Forests

The Committee considered the real and longstanding problems of lumber shippers, particularly those in Northeastern Ontario.

A group of lumber manufacturers commented to the Committee that:

Increased production, product variety and different handling methods, in conjunction with unprecedented customer demands for prompt, reliable and increased shipments has led the industry to increased reliance upon truck transportation to complement railway shipments.

Due to the enormous capital expenditures to increase mill capacity, the mills find it impossible to organize and finance their own trucking operations to handle mill output. It has also become evident that those transportation carriers presently licensed under The Public Commercial Vehicles Act are not properly suited to handle the output of lumber and lumber products. Such inadequacy exists both with respect to the quantity of vehicles available and the particular use to which these vehicles may be put....

The industry proposes amendments to The Public Commercial Vehicles Act and the Regulations thereunder which would recognize the unique dilemma of Northern shippers and facilitate and foster the growth of adequate trucking facilities to transport lumber products.

Existing rail facilities from Northern Ontario to Southern Ontario markets are inadequate....it has been estimated that the lumber shipments out of the Mattice-Hearst-Calstock area represent 170,000 tons per annum. Approximately 60 - 75% of this output is shipped by rail.

Rail service is inadequate in two ways. First, there is insufficient rail equipment,....Secondly, rail is often an inefficient means of servicing the lumber industry's clientele ....Many of the members of these industries do not have access to rail siding facilities. Due to these offtrack delivery requirements....rail services simply cannot furnish the complete range of needs of the lumber industry.

The industry has experienced considerable difficulty in obtaining constant, efficient and economic service from those carriers licensed under The Public Commercial Vehicles Act.<sup>2</sup>



The Committee heard conflicting testimony from carriers licensed to serve the Northeast. The carriers testified of excess capacity of suitable equipment, the use of which was simply not being demanded by shippers. <sup>3</sup>

Readers are reminded of the survey done by the Ministry of Transportation and Communications in 1974 to analyze the capacity of truck fleets available to Northern Ontario lumber shippers. The conflict of opinion as to supply and demand which was apparent to this Committee was substantively the same as that which existed in 1974 and which caused the above referenced study. The report of the Ministry of Transportation and Communications stated in part:

Area 1 (Districts of Cochrane, Timiskaming and that portion of Nipissing North of North Bay.)

The utilization ratio (tonnage shipped/capacity) is two and a half times higher for this region than it is for the next highest region. This indicates that there is a real difference in the quality of service available to shippers in this area.

The total number of trailers shown to be available to the lumber industry are known to carry other products.

An absolute short fall in capacity would occur if 30 percent of the available trailers were used to haul other products. The highway carriers could not provide sufficient capacity if shippers of the area withdrew participation from railway agreed charge contracts.

Area 2 (Districts of Algoma, Sudbury and that portion of Nipissing adjacent to Highway 17 including North Bay.)

Trailer capacity is more than adequate to handle total annual lumber production.

Area 3 (Districts of Thunder Bay, Rainy River and Kenora).

Trailer capacity is adequate to handle the present lumber production. <sup>4</sup>

Related to the longstanding arguments over the availability of trucks to haul lumber from the Northeast is the use of rail. Lumber manufacturers of the area ship a considerable volume by rail, most of which is by agreed charge. For example as indicated in the quotation above, approximately 60 - 75% of the output of the Mattice-Hearst-Calstock area is shipped by rail.

Despite complaints of lack of truck service to the area, agreed charge volumes have existed for years. The Committee is aware of recent reports of a threat by members of the Hearst Lumberman's Association to purchase their own fleet of trucks, if railway companies insist upon increasing their freight rates to the Association. The companies have approximately 12 trucks and plan to acquire another 20 before summer to complete the fleet. This would eliminate the necessity for shipping by rail.

A meeting in Toronto in November apparently failed to sway Canadian National, Canadian Pacific, Ontario Northland and Algoma Central Railways from raising the freight rate nearly 20% for rail shipment of lumber from Hearst to Southern Ontario. The Association pointed out that the increase would be a burden to the industry.

The companies produce approximately 150,000 tons of lumber annually, for which they pay about \$2 million to the railway companies

in freight rates. The Association has said rail rates have increased 50% in the last seven years while highway rates increased only 35%.<sup>5</sup>

In the event that this integration of lumber manufacturers does not materialize, or that in materializing, there exists, because of the lessening of volumes carried by rail, a shortfall of capacity to carry lumber from the north, the Ontario Highway Transport Board should review the situation. Any shortfall should be filled by the grant of sufficient class D authorities.

In view of these reported developments, the Committee's recommendations with regard to unlicensed truckers, the removal of the north of North Bay restriction and the commitment to the principles of economic regulation of the for-hire trucking industry, the Committee recommends no change to the current exemptions regarding lumber in Section 2(2) of The Public Commercial Vehicles Act.

In a related area, the Committee has noted a difference in policy between the Ontario Highway Transport Board and the Ministry of Transportation and Communications. The Ontario Highway Transport Board regards the transportation of wood chips, shavings or sawdust as not exempt from the provisions of The Public Commercial Vehicles Act. Therefore, the Board will issue certificates in respect of applications for Class F authority for the movement of the commodities.

The Ministry of Transportation and Communications on the other hand, has a policy of not enforcing the provisions of The Public Commercial Vehicles Act in respect of such movements. Either the

Ministry views the movement to be exempt or it has simply chosen not to enforce the law.

A difference of opinion between the Ministry of Transportation and Communications and the Ontario Highway Transport Board of such consequence cannot be allowed to continue. Similarly, enforcement of current law must be undertaken. It is clearly inappropriate to exempt certain movements from regulation through an administrative decision to not enforce the law.

The Committee is of the opinion that the movement of these commodities is not exempt from regulation and should not be exempt from enforcement.

#### 3.5.2 Farms

The Committee received little testimony with respect to agricultural movements being exempt. Most testimony relating to agricultural products was related to reciprocity, as discussed in Part V of this Report.

Beyond that, the Committee received written testimony from the Ontario Wheat Producer's Marketing Board. The Board commented on the problems experienced with the movement of grain during peak periods. After noting that 70% of the 23 million bushel crop is moved by truck to destinations, the Board explained its transportation process as follows:



Agents or country elevators, appointed by the Board, are responsible for the wheat. All onus of responsibility of the wheat is their's by contract, with respect to insurance, loss of quantity and/or condition. Agents have been charged under The Public Commercial Vehicles Act for trucking wheat without a licence, owing to the fact that ownership of the wheat they trucked, was that of the Board's....

This places the Board in the position, where 100% of the agents who have their own trucks, cannot legally use these vehicles to haul wheat for the Board. If only licensed carriers (under Provincial Laws) were used, there would never be enough trucking equipment available for the harvest. This point has been a well-known fact during the past harvest period.

The agents trying to acquire proper licence, would receive opposition from trucking companies already licensed in the area protecting their licence.

The Board is restricted in the use of the trucking industry to its fullest. On occasions, a trucking firm, hauling a commodity into an area, cannot return with loads of wheat, since their Public Commercial Vehicles Licence does not cover that area.

As they return empty, trucks in that area must be hired to transport the wheat to a destination and then return empty because they also have no licence to take a return load. This, in a time of energy conservation, is gross neglect of efficient transportation systems.

The Board's operations in terms of negotiating traffic tariffs, is limited by The Public Commercial Vehicles Act. The Board does not pay the costs for trucking directly, but rebates agents on one specific set rate from originating point, to point of destination. The agent must hire the licensed truck. The agent cannot expect any different rate of rebate from the Board if he needs extra trucks and that firm's tariff is higher than the rebate. Inversely, trucking firms that have to republish to agree with rebate, legally must wait 30 days (P.C.V. Section 12, Paragraph 1), to charge the rebate tariff.<sup>6</sup>

The Committee has recommended that the Ontario Highway Transport Board be allowed to waive the 30 day filing period for new rates. The public would be well served if the Ontario Highway Transport Board

considered waivers of the waiting period in seasons of peak demand for wheat movements, as required.

The Committee cannot conclude from existing evidence whether the supply of licensed carriers authorized to move wheat is sufficient to meet peak demands. A quantification of the shortfall, if any, must be left to the Board to review on request. If a shortfall of supply exists, the Ontario Highway Transport Board should respond, recognizing the public necessity for the fast and efficient movement of grain during periods of peak demand.

### 3.6 The Brokering of Transportation Services

The terms broker, owner-driver, owner-operator, independent owner-operator and broker-driver are often used interchangeably. The Committee would be pleased if use of the latter term was discontinued. A person either is a licensed carrier or he is not. Any licensed carrier may broker transportation services through the use of persons who own trucks but are unlicensed.

The Committee views an (independent) owner-operator as a licensed carrier himself. He may or may not augment his fleet by the utilization of trucks of an owner-driver.

An owner-driver is a truck owner who does not hold a licence. He may operate for-hire in Ontario (excluding farm or forest movements) only under the authority of someone else's Public Commercial Vehicle Licence.

Thus, a pure broker would employ independent owner-operators. A licensed carrier who augments his fleet by vehicles owned by others, does so by brokering, but employs owner-drivers.

### 3.6.1 Pure Transportation Brokerage

The Committee's terms of reference direct the investigation of the import of the growth in the use of brokers in the highway transport industry and the highway transportation services to the shipping public.

The transportation industry refers frequently to owner-operators as "brokers". This is a misrepresentation. In one brief to the Committee, a broker was defined as a "company or individual who provides work for the independent owner-operator". An independent owner-operator was defined as one who "owns directly - he also has the opportunity to work through a broker".<sup>7</sup> In this brief and in one other, the impact of brokers was described under the following headings:

1. dispatching from a central location on a 24-hour basis,
2. financing by making advances on accounts receivable,
3. assistance in purchases of fuel and insurance,
4. economies in bookkeeping and office requirements,
5. solicitation of accounts,
6. providing steady work for owner-operators,

7. negotiating rates with shippers, and
8. assistance in the event of mechanical breakdowns. <sup>8</sup>

The use of brokers appears to be growing. In part, the demand for owner-operators has been increased by:

1. constant demands by organized labour for greater compensation,
2. the scarcity of good drivers,
3. a feeling that the owner of equipment takes better care of his tractor and trailer than the employee who has no interest in his equipment, and
4. availability for seasonal, peak or emergency situations where equipment is needed by either a shipper or a transport operator.

The broker is the intermediary between supply and demand. He can supply vehicles and drivers to the person who needs them. The broker is paid by the party requiring the vehicles. In turn, the broker pays the owner-operator and usually takes 10% of the price as his compensation. The broker's percentage may be more if the owner-operator has a power unit which pulls a trailer owned by the broker (25% is a common figure).

At the sittings of the Committee in Toronto on March 3rd, 1977, one broker produced six owner-operators who favoured the use of brokerage services. A salt producer, shipping substantial quantities of salt to points in Ontario, expressed satisfaction with the services of the transportation broker, stating that he was able to save time in finding the additional equipment necessary in unexpected winter weather conditions. <sup>9</sup>



### 3.6.2 Brokerage by Licensed Carrier

Evidence indicated that licensed carriers acting as brokers sometimes require a transfer of the registration of ownership. Thus a licensee under The Public Commercial Vehicles Act will give work to an unlicensed owner - driver only if and when the owner-driver "sells" or "turns over" his vehicle to the licensee and no money changes hands. The Sales Tax Division of the Ministry of Revenue facilitates such transfers by providing a form which is accepted to obtain exemption from sales tax. This aspect of broker activity was discussed in the Ministerial Inquiry into the Dump Truck Industry in 1975. In the report of the Inquiry, the Commissioner remarked that:

As it is a normal custom that payment for transportation is made by the shipper to the broker, rather than to the trucker, it is further recommended that each broker post a bond of not less than \$5000 to ensure payment by him to the owners of the equipment, where the owners are independent or "at arm's length" from the broker. 10

A transfer of registration under these circumstances is dangerous. Should the transferee become bankrupt for example, all the assets pass to a trustee. Vehicles whose ownership is registered in the name of the bankrupt firm will automatically pass to the trustee in bankruptcy, who will be entitled to sell them.

A safer alternative is now provided in the regulations under The Public Commercial Vehicles Act, whereby an owner may rent or lease his vehicle to a licensee under The Act and still retain ownership.

The Committee has studied this aspect of the subject of leasing. Here, special considerations exist, a group of factors which do not exist elsewhere:

1. Seasonal or peak requirements by licensees for commercial vehicles with or without drivers.
2. Specialized service factors which require sophisticated equipment and driver expertise such as the movement of dangerous commodities.
3. An opinion, by licensees, that owner - drivers will provide better maintenance than operators who do not own power equipment.
4. A tendency by licensees to share revenue for the loads carried by owner - drivers. This opens an avenue for possible abuse. As an extreme example, if a licensee is offered two loads - one of so-called "balloon freight" such as corn flakes or empty containers which produces low ton-mile revenue, and the other of heavy goods such as lead ingots which produces high revenue per ton mile, what could be the result? The owner - driver is given the light load; the licensee takes the heavy load. If the owner - driver is paid only on the basis of a share of the revenue, the licensee has nothing to lose. The owner-drivers may suffer under this policy. Such situations have existed. As a result, the present policy of the Ontario Highway Transport Board is to withhold approval of leases by owner - drivers to licensees unless:
  - i) the owner - driver is paid on the basis of mileage or time regardless of being loaded or empty;
  - ii) the equipment cannot be sub-leased by the licensee;
  - iii) the lease must be for a minimum period.
5. Registration of ownership in the name of the licensee may cause financial loss to the owner - driver if the licensee becomes bankrupt and the trustee in the bankruptcy assumes ownership of all apparent assets of the licensee.
6. The Committee's recommendation would not only serve to maintain a balance of power between the parties concerned, but would also lead to placing responsibility for violations of The Highway Traffic Act on the true owner rather than the registered owner - if the owner - driver retains his identity as proposed by the Committee and as authorized under Section 12(2) (a) of The Public Commercial Vehicles Act.

The Committee recommended in the Interim Report that unlicensed independent owner-drivers be registered with and by the Ontario Highway Transport Board. This recommendation resulted from a desire to identify and control the for-hire movement of goods. The recommendation was also based on a desire to protect owner-drivers.

Experience has shown that owner-drivers are:

1. desirable, economic and practical;
2. law-abiding, hard working, reliable businessmen;
3. subject to the whim of licensees;
4. vulnerable if they register ownership of their equipment in name of the licensee, particularly where the owner-driver is not aware of Section 12(2)b of The Public Commercial Vehicles Act.

The Committee has changed its view and does not recommend registration. The recommendations which are put forward will suffice to identify and protect owner-drivers.

### 3.7 Owner-drivers and owner-operators; Bonding and Dependency

Throughout its deliberations, the Committee was concerned about the position of the owner-operators and owner-drivers. The Committee heard testimony of the hardships created either by the unscrupulous practices of "pure" brokers and licensed carrier-brokers, or the bankruptcy of the broker, licensed carrier or other user of the transportation service. The hardships seem most often to relate to the construction industry.

The Committee considered a recommendation to require brokers to post a bond in guarantee of payment to those owner-operators or owner-drivers and other tradesmen whose services the broker uses. Such a

bond could be based on some amount per vehicle hired or on the normal monthly payroll. The Committee feels, however, that registration of pure transportation brokers, and the normal licensing of for-hire carrier-brokers, when considered with the review powers of the Ontario Highway Transport Board recommended will provide sufficient control. A measure of improvement could only be achieved by bonding those who use the broker to obtain transportation. It is the consignor who must ultimately produce payment for transportation and other services.

Since no all encompassing solution to protecting subtrades (including truckers) is apparent, it is hoped that recommendation 30 of this part will precipitate further investigation. More specifically however, the Committee's recommendations in Chapter 5 of this Part with respect to payment of accounts may help to protect all truckers and at the same time insure the prompt submission of accounts for shippers. As well, the Committee's recommendation 31 in this Chapter will protect the income of independent owner-operators and owner-drivers by requiring that Workmen's Compensation payments be made to cover all such truckers.

A discouragement or prohibition of the practice whereby an owner-driver transfers the registration of his vehicle to a licensed carrier, will also provide protection to the owner-driver.

Having discussed the independent owner-operator, it is appropriate to note the recent decision of the Ontario Labour Relations Board in the case of the Mount Nemo Truckers Association and Nelson Crushed



Stone and United Cement Lime and Gyproc Workers International Union.

A copy of the decision is attached as Appendix X.

The decision certified a group of "independent" owner-operators as a trade union. This decision is a landmark and its effects will be felt in the trucking industry for years to come. There may no longer be any independent owner-operators: rather, there will be dependent contractors, whether or not they hold a Public Commercial Vehicle licence. The registration process which the Committee recommends, and the entire Class R system, may become redundant. It would appear that the decision opens the door for unions to make dependent contractors part of their total agreement with a pit or contractor. However, some local groups may not qualify for certification because their members do not necessarily work for one pit or contractor. Even if the Associations of dump truckers could qualify, they could not afford the cost of applying for each and every pit or contractor. As it now stands, every group at each pit or with each contractor would have to apply as their own group.

### 3.8 Recommendation

The Committee recommends that:

1. The Public Commercial Vehicles Act be amended to include the definition of a tow truck to the effect that a tow truck is a non-articulated commercial motor vehicle over 5,000 pounds registered gross weight designed by the manufacturer or re-

designed, converted or reconstructed and used exclusively to elevate or hoist or lift and tow another vehicle by means of a device which may be a winch or hoisting mechanism or a crane or tow dolly, permanently attached to the tow truck.

(a) The Act should be amended to the effect that no person shall operate a tow truck on a highway for compensation unless the operation is registered with the Ontario Highway Transport Board.

(b) All applicants for registration shall provide information required to the Ontario Highway Transport Board which shall include evidence as to;

(i) the name, address and telephone number of the operator,

(ii) the principals of the company, and

(iii) the nature and geographic limits of its operations.

2. Outstanding applications by tow truck operators before the Ontario Highway Transport Board be disposed of by the Board.

3. The Ministry of Transportation and Communications develop a program of annual tow truck safety inspections and prescribe suitable equipment standards.

4. The Ministry of Transportation and Communications consider specifications for a form detailing charges to be filled out by the tow truck operator and signed by the owner or operator of the vehicle being towed, and explore with the Ministry of Consumer and Commercial Relations further action with regard to consumer protection.

5. The Ministry of Transportation and Communications with the Ministry of Colleges and Universities develop a course for tow truck operators at the community college level.

6. The Ministry of Transportation and Communications explore with the Ministry of the Treasury, Economics and Intergovernmental Affairs provisions for municipalities to regulate tow truck operations particularly upper-tier municipalities.

7. The Public Commercial Vehicles Act be amended so that tow truck operations are clearly excluded from the requirements to hold a Public Commercial Vehicle Operating Licence provided that such operations are duly registered.

8. Section 2(2) of The Public Commercial Vehicles Act remain unchanged otherwise.
9. The Ministry of Transportation and Communications and the Ontario Highway Transport Board resolve the different approaches to the transport of wood chips, shavings and sawdust, as these commodities are not exempt by virtue of Section 2(2) and related law should be enforced.
10. The Ontario Highway Transport Board, if specifically requested, review licences authorizing the movement of wheat to determine if shortfalls of capacity are likely in peak demand periods.
11. For-hire transportation of freight in automobiles be regulated on the same basis as freight carried in station-wagons and trucks.
12. Continuity of automobile operations existing at the cut-off date of publication of this Report be assured by the grant of "grandfather" Public Commercial Vehicle privileges strictly limited to the nature and scope of operations at the cut-off date.
13. "Grandfather" applications be granted by the Ontario Highway Transport Board upon proof of and only to the extent of operations prior to the cut-off date. Any person who intends to initiate or expand or alter such a service thereafter must apply to the Ontario Highway Transport Board for authority in respect of the new or expanded or altered service, and the application will be heard through the normal hearing process by the Ontario Highway Transport Board and subject to the test of public necessity and convenience.
14. The definition section of The Public Commercial Vehicles Act be amended to allow the regulation of automobiles which is to be required by amendments to implement the principle contained in 11 above.
15. All automobiles (cars) operated under a Public Commercial Vehicle Licence be plated under The Public Commercial Vehicles Act.
16. All automobiles (cars) operated under a Public Commercial Vehicle Licence carry the company name on both of the front doors of the vehicle.

17. A broker of transportation services be defined in The Public Commercial Vehicles Act.
18. A transportation broker not be entitled to own any commercial motor vehicles or have any interest in commercial motor vehicles and not lease vehicles.
19. A transportation broker be permitted to arrange transportation for the consignor of goods only if the goods are carried on vehicles by operators authorized to do so under The Public Commercial Vehicles Act.
20. All transportation brokers except those otherwise licensed under The Public Commercial Vehicles Act be registered with the Board.
21. It be an offence to broker transportation services or lease vehicles or supply drivers without being registered.
22. Applicants for registration as brokers provide to the Ontario Highway Transport Board all required information which will include;
  - i) name, address and telephone number of the company;
  - ii) the principals of the company and information at registration and quarterly thereafter as to;
    - a. the truckers engaged,
    - b. the method of payment to truckers and responsibility for maintenance, fuel, fines and Workmen's Compensation, and
    - c. the names of those who consign goods through the Broker.
23. All brokers pay their licensed carriers at a minimum, every two weeks or bimonthly.
24. All persons who perform a brokering service but who are licensed as a for - hire carrier not register as brokers and be exempt from recommendations 18 - 23 above.



25. Any person licensed as a for-hire carrier and who utilizes an owner-driver to perform transportation services under the former's Public Commercial Vehicle authority or exemption shall,
- (i) execute a contract with the owner-driver, the form of which shall be prescribed in the regulations,
  - (ii) shall file the contract with the Ontario Highway Transport Board,
  - (iii) shall notify the Board within a prescribed time period when the contract is no longer in effect.
26. The contract in 25 above shall set out,
- (i) that Workmen's Compensation Board payments are made in respect of the owner-driver,
  - (ii) that payment will be on some basis other than a percentage of revenue, and what the method is,
  - (iii) an agreement of not less than 30 days,
  - (iv) terms and conditions as to which party is responsible for maintenance, fuel, insurance and payment of fines for transportation related convictions.
27. Any person on contract with a licensed carrier as defined by 24 - 26 above shall carry in the vehicle copies of;
- (i) the registration permit,
  - (ii) the operating authority,
  - (iii) the contract in the prescribed form.
28. Section 12(2) of The Public Commercial Vehicles Act be amended to the effect that to be eligible for a vehicle licence, the operator must either hold title to the vehicle or the vehicle must be on contract to the licensee in the above recommendations or be validly leased.
29. The appropriate act be amended so that the existence of such a contract will permit charges in The Highway Traffic Act against the licensed carrier as if he were the registered owner.

30. The Government consider general bonding provisions for users of for-hire transportation services, particularly those in the construction business, to provide for the payment of subtrades.
31. Payments be made to the Workmen's Compensation Board in respect of all owner-drivers or owner-operators.
32. All registrants as tow truck operators and transportation service brokers shall undertake to;
  - (i) limit advertising and other information published as a result of this registration, to a statement of the registration number. The registrant shall not state or infer that approval has been given by or on behalf of any Board or Ministry of the Government of Ontario;
  - (ii) notify the Ontario Highway Transport Board of any material changes in the particulars furnished on the application for registration. Such notice shall be given within 15 days following the effective date of any change of particulars;
  - (iii) observe the provisions of Section 15(c) of The Public Commercial Vehicles Act on the same terms and conditions as if the registrant held an operating licence under the said Act;
  - (iv) withdraw the registration if and when the applicant ceases to do business in Ontario;
  - (v) state the names and addresses of other parties having an interest in the ownership, management or profit of the business, by way of joint ownership, partnership or stock or other interest in a corporation.
33. All information required to be filed by registrants be prescribed in regulations under The Public Commercial Vehicles Act.
34. All registrants be subject to the provisions of Section 7 of the Public Commercial Vehicles Act.

PART VI - CHAPTER 3

REFERENCES

1. Shoniker, E.J., In a letter to the Committee, July 6, 1976.
2. Ontario Lumber Manufacturer's Association, Brief, August 26, 1976.
3. See Manitoulin Transport Ltd., and O.N.T.C. Briefs.
4. Ministry of Transportation and Communications, Truck Capacity Analysis, 1974.
5. Thunder Bay Times.
6. Ontario Wheat Marketing Board, Brief, January 20, 1977.
7. Superb Truck Lines Ltd., March 3, 1977.
8. Superb Truck Lines Brief, March 3, 1977, Island Transport Ltd., Brief., March 3, 1977.
9. Chidley, R.L., Canadian Salt Co. Ltd., in oral testimony, March 3, 1971.
10. Op Cit., Report of the Ministerial Inquiry, Page 23.

## CHAPTER 4

### LOAD AND VEHICLE CONTROLS

#### 4.1 Uniformity Between Jurisdictions

The Committee has discussed particular aspects of the need for uniformity, particularly within Canada.

Figure 1 illustrates the weight and dimensional limits which exist within Canadian jurisdictions. Readers will note the many differences.

The Committee has stressed the need for uniformity in its discussions of joint Board hearings, reciprocity, bills of lading, movement of hazardous commodities and the roles and responsibilities of Provinces and the Federal Government in regard to transportation.

As much as the development of rational, effective transportation law and policy needs consultation and cooperation between government and industry it needs dialogue between governments to harmonize existing laws. Equally necessary to the future process is dialogue between researchers and academics. Their expertise will be required by governments and industry if laws across Canada are to be rationalized and the flow of goods from one jurisdiction to another made more efficient.



JURISDICTION	LENGTH (in Feet)		GROSS AXLE LOADS (in lbs.)		PRACTICAL PERMISSIBLE GROSS WEIGHTS (in lbs.)					Maximum Possible Any Comb.	
	Single Unit	Semi- Trailer	Any Comb.	Single	Tandem	Truck or Truck- Tractor					
						2 Axle	3 Axle(8)	T.S.T. 3 Axle	T.S.T. 4 Axle		T.S.T. 5 Axle
Alberta	40	N/S	65(3)	20,000	35,000	30,000	45,000	50,000	65,000	80,000	110,000(5)
British Columbia(7)	35	45	65(3)	20,000	35,000(1)	30,000	45,000	50,000	65,000(1)	82,000(1)	110,000(11)
Manitoba	40	N/S	65(3)	20,000	35,000	30,000	45,000	50,000	65,000	80,000	110,000
New Brunswick(7)	45(2b)	N/S	65	20,000(10)	35,000(10)	30,000	45,000	50,000(10)	65,000	80,000	125,000(10)
Newfoundland(2a)	40	N/S	65	18,000	32,000	28,000	42,000	46,000	60,000	74,000	112,000
Northwest Territories	40	N/S	65	20,000	35,000	30,000	45,000	50,000	64,000	80,000	110,000
Nova Scotia(2)	40	45	65	21,000	37,000	32,000	48,000	53,000	69,000	85,000	85,000
Ontario(7)	35	45(9)	65	20,000	35,000(1)	30,000	45,000	50,000	65,000(1)	80,000(1)	140,000
Prince Edward Island(5)	40	N/S	65	20,000	35,000	30,000	45,000	50,000	65,000	80,000	110,500
Quebec(6)	35	42½(4)	65	22,000	38,000	41,000	57,000	56,000	72,000	88,000	126,000
Saskatchewan(7)	35	N/S	65(3)	20,000	35,000	32,000	47,000	52,000	67,000	82,000	110,000
Yukon Territories	35	45	70	20,000	35,000(1)	30,000	45,000	50,000	65,000(1)	80,000(1)	140,000

ABOVE LIMITS APPLY ON DESIGNATED HIGHWAYS, LOWER LIMITS APPLY ON OTHER ROADS.

Height & Width - All jurisdictions permit a maximum width of vehicle and load of 8½ feet and a maximum height of 13½ feet (P.E.I. permits 14½ feet)

All weight calculations are based on a steering axle loading of 10,000 lbs. except Northwest Territories where maximum is based on 9,000 lbs. on steering axle. If these loadings on steering axle are not achieved, maximum must be reduced by the amount of deficit. In Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Yukon heavier loadings on steering axles will permit greater maximum loads. All jurisdictions limit gross loads to 600 lbs. per inch of tire width except Alberta, Manitoba, Northwest Territories and Saskatchewan where limit is 500 lbs. per inch.

All provinces now allow double trailer operations. No additional weight is allowed in Nova Scotia and Prince Edward Island.

- N/S - Limited only by overall length of combinations.

(1) Tandem axle spreads in excess of 51" in Ontario and Yukon Territory and 54" in British Columbia permit heavier weights. Ontario and British Columbia permit triple axles. In B.C. one axle must articulate and maximum fixed axle spread is 65".

(2) Includes tolerances of 1,000 lbs. per single axle and 2,000 lbs. per tandem axle (except steering axle).

(2a) 10% tolerance allowed on GVW.

(2b) Maximum length of a 2 axle vehicle is 35'.

(3) Alberta allows triple combinations with a maximum length of 98 feet under special permit between Calgary and Edmonton. Doubles allowed 70 feet in Alberta, Manitoba and Saskatchewan and 72 feet in B.C. by permit.

(4) Quebec limitations measured from king-pin to rear of vehicle.
- (5) 5% weight tolerance on all vehicles up to the maximum indicated in last column, which may not be exceeded, except in Alberta 5% to a maximum 2,000 lbs. on a gross up to 86,000 lbs.

(6) Based on specified minimum axle spacings and tire width.

(7) Bridge formulae on varying bases apply in these jurisdictions.

(8) Ont. & Que. have provision for 4 axle single units

(9) Except car semi-trailers - no limit.

(10) Applies on Trans Canada Highway and other routes - consult government agency.

(11) On weights in excess of 78,000 lbs. two drive axles required and horsepower to weight formula applies - 300:1.

Compiled by ONTARIO TRUCKING ASSOCIATION. Based on information from official sources, but Government agencies should be consulted for specific details - see reverse side for list of Government agencies.

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FIGURE 1

#### 4.2 Fourteen Foot Mobile Homes

Currently, mobile homes over 14 feet in length must be moved under police escort. The Committee has observed the formation in other jurisdictions of "escort companies". The Committee would support such a development in Ontario if it would allow for the safe, escorted movement of mobile homes and other large loads and free the Ontario Provincial Police for enforcement duties.

The Committee was informed that:

The delay in obtaining a permit to move a 14 foot wide mobile home has put many home owners up in arms. The two - three week delay is due to the complex set up of the Ontario Provincial Police escort. To the best of my knowledge, we are the only province in Canada bound by this legislation. <sup>1</sup>

Whether this overstates the real problems, a simpler and equally safe procedure might be possible if the law were to recognize escort companies.

#### 4.3 Securing of Loads

The Committee notes and endorses the attempts of the Ministry of Transportation and Communications to develop standard regulations

respecting the security of particular types of loads on commercial vehicles. The Ministry has developed proposals dealing with the security of loads of steel coils and lumber. These were under discussion with the industry as of the time of writing. The Committee urges the Ministry to examine the requirements of neighbouring jurisdictions so that uniform regulations are developed.

#### 4.4 Oversize/Overweight Permits

The Committee notes the exemption from the requirement to obtain an oversize/overweight (O/O) permit for what The Highway Traffic Act now defines as an "overdimensional farm vehicle". This new process, although not yet implemented, has the support of the farming community and the Ontario Retail Farm Equipment Dealers' Association. The principle of the program is endorsed by the Committee as one which might be extended to other types of movements to update the O/O permit system.

#### 4.5 Livestock

The Committee was impressed by the representations made to it by the Humane Societies and is in accord with their objectives. Both the North Bay and District Humane Society and the Canadian Federation of Humane Societies testified.

The Committee stated in the Interim Report:

The condition of animals at stockyards is subject to The Live Stock and Live Stock Products Act of Canada. Every stockyard and packer's yard is subject to inspection at all times by



inspectors of the Federal Department of Agriculture, and the owner or operator must afford the inspector every facility requisite to the performance of his duties. The Governor General in Council may make regulations respecting the transportation of any livestock, and may require any person or class of persons engaged in the transportation of any livestock to register with the Federal Department of Agriculture. Inspectors may examine any vehicle containing livestock and delay the shipment for the time necessary to complete his inspection. Animal contagious diseases are the subject of strict Federal regulation, and supersede any local authority. Every person who neglects to give notice, as required by law, of any facts discovered or perceived by him indicating the appearance or the existence of infectious or contagious disease among animals under his special care, or who conceals the existence of infectious or contagious disease among animals shall incur a penalty not exceeding \$200.

The Criminal Code of Canada has dealt with cruelty to animals. The Ontario Ministry of Agriculture, under the terms of The Beef Cattle Marketing Act and The Meat Inspection Act has authorized cooperation with the Federal Department of Agriculture or with the government of any province of Canada. References to transportation may be found in The Ontario Farm Products Marketing Act, (where "marketing" includes transportation) and in The Ontario Live Stock and Live Stock Products Act, authorizing inspectors to stop and inspect vehicles on highways. Ontario has allowed subsidies to be paid by municipalities to veterinaries in territorial districts, under the terms of The Department of Agriculture and Food Act.

Under The Ontario Farm Products Marketing Act, producers, shippers and the regulatory board have established guidelines for the movement of hogs. Space requirements have been announced, as well as "red alert days". The latter refers to days when heat and humidity must be considered. The information is distributed over the teletype facilities of the Ontario Marketing Board.

On September 11, 1976 a new centre for rest and feeding cattle was opened at a location seven miles west of Thunder Bay. It is a cooperative venture by nineteen Ontario and three Prairie trucking companies. The total investment in constructing a barn and other facilities will be close to \$500,000. Cattle will spend five to ten hours at this station before they continue the trip by road to Ontario feedlots. The Committee is informed that cattle moved in this way will rebound from the trip faster than cattle moved by rail. It is estimated that one thousand truckloads of cattle will move by truck this year from Western Canada to Ontario.



Under Federal Bill C-28, new legislation was passed in 1975 known as The Animal Disease and Protection Act. It is hoped that regulations under this Act, when promulgated, will contribute measurably to the humane handling of livestock. Watering, feeding and general care of animals are to be the subject of the new law. The Committee supports the principle underlying the new regulation. It is to be hoped that appropriate regulations will be promulgated and made effective as soon as possible.

The regulations became effective January 20, 1977.

The Committee is aware of the concerns of some provinces that the regulations proposed by the Federal Government represent an erosion of provincial authority over truck transportation. The Committee's views on provincial roles and responsibilities should be clear from Chapter 1, Part III.

The Committee believes that a strong role for Ontario is a necessity and that uniformity must be brought to the regulation of extra-provincial motor carrier movements. The Committee has noted Transport Canada's commitment to participate in the CCMTA and stresses the need for federal-provincial cooperation in the development of regulations and in the setting of enforcement responsibilities.

Clearly the matter of who enforces federal laws regarding intra- and extra-provincial truck movements, particularly at shippers' premises, must be mutually agreed to at federal and provincial levels. Given the lack of such an agreement to date in the case of livestock regulations, enforcement is now occurring only at federally-regulated stockyards.

While the Committee notes the apparent difference of opinion in the agricultural field with regard to the constitutional jurisdiction of the federal government, it sees no reason to believe that accommodation and therefore, extension of the regulations to other types of truck movements are not possible.

#### 4.6 Hazardous Commodities

Discussions have been held over recent months between the federal and provincial governments with respect to regulations for the movement of hazardous commodities.

In these joint discussions it has been agreed that regulations of all jurisdictions in Canada should be uniform. As a result, the Federal Government is drafting new legislation and detailed regulations, the principle of which has been agreed to by all provinces. The intention of the provinces is to adopt in provincial law federal requirements once they are in place. The federal law will serve as a guideline for provincial law.

Transport Canada outlined the status of its role in this matter for the Committee:

For some time Federal Regulations for the transportation by highway of explosives and radioactive materials have existed under The Explosives Act and The Atomic Energy Control Act. Both of these Acts....are essentially founded on court tested bases of public safety in the first instance and significant national interest in the second...The Federal Government also has regulations in place with respect to air, rail and sea transport.

Thus, when the question of the highway transport of dangerous goods was raised a number of years ago, it was agreed that the Federal Government should take some initiative with respect to highway transport....in order to provide uniformity across the country and also compatibility with the other modes of transport and with the United States. In the U.S.A., existing regulations are also at the federal level with intrastate movements being made subject to the federal regulations by means of their adoption by the States. Consequently, a submission to Cabinet was prepared indicating provincial and industry support for an Act empowering the promulgation of regulations for the transport of dangerous goods in highway vehicles of extra-provincial undertakings.

At the same time, some provincial representatives in this process indicated that the federal government should not become involved in inspection activities on the highway. Other provinces had a concern for their capability to take on what would become an additional inspection task. Many were particularly concerned that their highway or motor carrier inspectors were not suitable for ensuring compliance with contemplated law in the stages immediately prior to transport, because this would involve the inspection of shippers' premises....

Nonetheless, the provinces agreed that the federal government should provide a "core inspection capability", to serve as a reference point for the provincial highway and motor carrier inspectors, and which could at provincial requests assist in highway inspection programs of a blitz rather than a routine nature. The federal core group would, in addition, undertake random inspections of the premises of shippers known to be preparing dangerous goods for transport by highway to ensure greater compliance at that stage of the transportation cycle. Thus, a meshing of inspection activities seems to have been arrived at that looks quite functional and efficient.

There was concern expressed by some provinces about the additional cost of the enforcement with respect to dangerous goods movements. Suggestions were made by these provinces (which were opposed by others) that direct federal contributions, by way of grants, would be useful or necessary. We, on the other hand, countered that we would be making some inspection services available to the provinces as outlined above that would support the overall inspection staff. We could better support provincial inspection by undertaking to provide the training programs and

facilities that will convert the present provincial inspection agencies into agencies having a sufficient awareness and knowledge of the nature of dangerous goods and the regulations therefor to ensure effective enforcement. All of these points were reflected in a letter sent by the Minister of Transport to the provincial Ministers that was dated June 8, 1976.

In the spring of 1976, the legislation had, it was thought, reached a satisfactory level of drafting and was about to be submitted to Cabinet for approval and assignment to the legislative calendar.

At that time, major restraints were placed on the growth of the federal public service and occasioned by this, Transport Canada reviewed the way in which it was tackling the problem of dangerous goods regulations overall. It became apparent that the present modal approach to dangerous goods which had arisen over time had led to the duplication of a number of activities in each of the modal agencies. It was therefore concluded that some effort should be made to eliminate this duplication by centralizing certain responsibilities into a single multi-modal agency, thereby better utilizing the resources already allocated to the dangerous goods area and enabling a greater overall regulatory effort to be made....

This administrative rearrangement was ordered. The central agency will have the responsibility for the classification and enumeration of dangerous goods including the specification of the labels, the vehicle placards, the packages and the emergency response measures that would be appropriate in the event of an accident, for all transport situations except those that relate specifically to the carriage of those goods in bulk by a single mode. Another example of a centralized task relates to the provision of "core" training programs....

The version of the Act which now exists, must be taken to Cabinet....Approval will be sought to render the Act multi-modal....For example the definition of "vehicle" will include all railway cars, ships and aircraft....

The current federal regulations were developed individually over time and therefore the modal regulations are not necessarily compatible with the proposed new law. The Coast Guard regulations were essentially based on the British regulations for sea transport but recently the Coast Guard has begun moving towards the adoption of the Inter-governmental Maritime Consultative Organization (IMCO) Dangerous Goods Code. IMCO is a United Nations agency.



The current federal rail regulations largely repeat the United States railway regulations, although over the last several years in particular some differences have developed. For example, Canada has moved ahead of the U.S.A. in some aspects of gas cylinder specifications and certification and in the provision and emergency response information. The United States on the other hand has introduced a number of modifications to rail car design which are not considered necessary for Canadian use. The air transport regulations are essentially those of the International Air Transport Association which is an industrial body.

A sincere international effort is being made to harmonize internationally all of these regulations through the United Nations Committee of Experts on the Transport of Dangerous Goods.

This effort is gaining a fair amount of inertia and a number of nations are beginning to move to the adoption of the United Nations recommendations....

To a certain extent, following the United Nations recommendations will mean departing from the current United States regulations which are used for example in rail transport and tend to be followed by a number of highway carriers as a good code of practice. However, the prescription of multi-modal regulations in Canada based on the U.N. will not result in any impedence to U.S. bound traffic since:

- (a) the U.S.A. is committed to accepting any imported goods transported according to U.N. recommendations, and
- (b) it is in any case moving towards adopting the U.N. recommendations in place of its own current regulations.

By following the U.N. recommendations, the Canadian transportation situation will be facilitated. The U.N. for example, tends to specify the performance of a package rather than its design. In this way, the shippers of dangerous goods are able to have greater freedom to follow changes in packaging technology than is currently permitted in the U.S.A. where designs and construction processes are actually specified in detail. We have been encouraged to follow this philosophy by a significant number of Canadian producers of dangerous goods who find that they are unable to purchase within Canada packages that will meet the U.S. specifications. They also find that changes in packaging technology has exceeded the ability of the regulatory system (in the U.S.A.)

to authorize new designs and construction processes. Indeed a major criticism of the current U.S. regulations is the fact that more dangerous goods are shipped within the U.S. under special exempting permits than in packages that are actually laid down in the regulations....

We are restructuring the regulations to focus around a comprehensive list of dangerous goods, shown item by item, and from which any interested person can immediately determine the proper shipping name, the identity number, the labels to be used, the standard of packaging, the type of packaging necessary and any special conditions which may be laid down for individual modes of transport including quantity limitations either within the package itself or for the consignment as a whole for a particular mode of transport.

Preceding this list will be a series of chapters in which are outlined: the shippers' responsibility, the nature of the packages and the method of testing them, and accident reporting information. Following the list as an annex, specific packages (as can be found in the current U.S. regulations) that are known to be suitable for dangerous goods will be cross referenced to the list's display of packaging information. The restructuring of the regulations is under way at the moment with the first effort being made on the development of the list, to be followed by the simplification of the chapters that had already been written in Canadian terms, but according to the U.S. format. The exact nature of these changes are extremely detailed....<sup>2</sup>

The Ontario Minister of Transportation and Communications wrote to the Minister of Transport for Canada in February 1977 outlining Ontario's position. The Minister stated in part as follows:

As a result of your Ministry's consultations, it was agreed that the Federal Government would introduce legislation providing for federal authority to promulgate regulations pertaining to the federally regulated modes of transportation and the premises of the shippers and receivers of dangerous commodities. Subsequently, the provinces were to enact and proclaim complementary legislation and regulations, in order to give uniform application to the federal regulations across Canada and with respect to all the modes of transportation.

I would like, at this time, to indicate to you my belief that the problem associated with dangerous commodity transportation are becoming more sensitive and important as time passes, and that there is need to promulgate the above-noted regulations at the earliest possible date.

The Committee supports the principle of the law under development and the process of joint federal-provincial discussion which has occurred. The Committee urges the federal government to proceed as quickly as possible. Once the federal action is complete, the province will have to react quickly. The task will be complex and implementation of suitable regulations will need to be well coordinated between Ministries. The Ministry of Transportation and Communications is by no means the only Ontario agency concerned and involved with regulations regarding hazardous materials.

#### 4.7 Gross Loads

Gross Load and Axle weight laws were summarily discussed in 1.5.2 of this Part, in the Dump Truck Chapter. Recommendations followed at Section 1.8.

#### 4.8 Recommendations

The Committee recommends that:

1. The Ministry of Transportation and Communications with the Ministry of the Solicitor-General consider allowing private escort vehicles which meet prescribed standards to provide escort vehicles on long, wide and heavy vehicular or load movements in lieu of requiring Ontario Provincial Police escorts consistent with the principles of the overdimensional farm vehicle regulations.
2. Regulations be developed to prescribe appropriate standards for escort vehicles.
3. The Ministry of Transportation and Communications continue to press the Federal Government for appropriate legislation respecting the movement by highway of dangerous commodities.
4. The Ministry of Transportation and Communications proceed with its development of securing of load regulations for goods which present particular difficulties or hazards in loading and/or transport, with a view to making the regulations flexible, consistent with the objective of making transport regulation uniform across Canada.
5. The enforcement and administration of federal livestock regulations be included as a matter for federal-provincial discussion within the Canadian Conference of Motor Transport Administrators and involve both transport and agricultural administrators.
6. Uniformity between jurisdictions of commercial vehicle laws, load laws and equipment laws be regarded as a desirable objective wherever practical by the Ministry of Transportation and Communications. This will be particularly applicable in any future redrafting of Parts V, VI, VII and VIII of The Highway Traffic Act dealing with equipment, gross weights, axle weights and speed respectively.
7. The Ministry make every effort to simplify axle weight laws in respect of all commercial vehicles.



PART VI - CHAPTER 4

REFERENCES

1. Gervais Mobile Home Transport Ltd., Brief presented in Ottawa August 25, 1976.
2. Transport Canada, A letter from D. Ellison, Transport Canada to B.B. Caldwell, February 17, 1977.

## CHAPTER 5

### OPERATIONAL ITEMS

#### 5.1 Licensing

Some of the methods of issuing licences were examined in Part II. The matter of operational controls through licence terms and restrictions was discussed in Part III of this Report. This section deals with two specific matters of policy and law in the area of licence administration.

##### 5.1.1 Dormant Licences

The Committee stated in the Interim Report that, "if and when the need no longer exists for an operating licence under The Public Commercial Vehicles Act and it is not being used, some action should be taken".

The Committee went on to state:

On the one hand, it can be said that the dormant licence should be retained by the licensee and reactivated or transferred at a later date. No one is harmed by this attitude. On the other hand, a licence to operate public commercial vehicles must contemplate continuous operation rather than a state of inactivity. The Committee heard from a witness in Hawkesbury who claimed that the existence of a dormant licence for the movement of used household goods would, in his opinion, prevent the issue of another, similar licence. He urged that the dormant licence be issued to him. This point of view is based on The Public Commercial Vehicle Licence being a tangible item which can be bought and

sold, like ordinary merchandise. The Committee disagrees with this concept of a licence.

There is, however, another situation where a dormant licence should be distinguished from a curtailment of service. A carrier who has amalgamated with another carrier may find that some routes are duplicated. Difficulties will arise following amalgamation which can be avoided by taking the necessary action prior to amalgamation.

It is unwise to generalize and to condemn all dormant licences. We are of the opinion that trafficking in licences must be discouraged. To create an active market for pieces of paper containing the privilege to operate a road transport operation is not in the public interest. Rather, the licence is a privilege to operate and where that privilege is not exercised, it should be cancelled.

Dormancy as a fact is often known to the licensee and not to others. Where a complaint is filed with the regulatory tribunal and dormancy is established by the Ontario Highway Transport Board, appropriate action can be taken. But where parties have entered into a bonafide transaction of purchase and sale, it is harsh to take away from the new owner a portion of an operating licence which is later alleged to be inoperative.

The Committee therefore recommended that:

1. The transfer or sale of dormant licences be prohibited.
2. Dormancy shall be construed as meaning a refusal or inability to operate in accordance with the expressed terms and conditions of an operating licence.

3. Dormancy shall not exist as long as the licensee holds himself out to the public to provide the transportation service authorized by the operating licence.
4. Dormancy, if and when found as a fact by the regulatory tribunal, shall precede the hearing of an application for the transfer of an operating licence.
5. If and when a bonafide agreement is made for the sale of a transport business, dormancy may not be an issue in the proceedings.

An operating licence could be dormant for either of two basic reasons. One, there is no demand for the service; the closing of a key industry in a small town could cut out demand for a previously active service. Two, a carrier may decide that an area or route is not profitable enough. In such a case, the carrier may set a rate so high that no traffic will move or he will simply cease to offer the service.

Section 10 of The Public Commercial Vehicles Act is directly relevant to the dormancy subject:

Subject to Section 12(i), the Minister may suspend or cancel an operating licence,

- a) where the licensee fails to begin to provide transportation services in accordance with the licence within thirty days after the issue of the licence, or within such further period as is specified in the licence;
- b) where the licensee fails for a continuous period of thirty days to provide transportation services in accordance with the licence;
- c) where the licensee is financially incapable of providing or continuing to provide transportation services in accordance with this Act and the regulations or the terms and conditions of the licence or of meeting his financial responsibilities to persons using such services; or



- d) where the licensee or any person under his control and direction contravenes this Act or The Highway Traffic Act or the regulations hereunder or thereunder or the terms and conditions of the licence and such contravention affords reasonable grounds for believing that the transportation services required by the licence will not be carried on in accordance with the requirements of such Acts or regulations or such terms and conditions.

Subsections a) and b) clearly prescribe that failure to begin to offer the service within, or discontinuance of a licensed service for 30 days is sufficient cause for the Minister to propose suspension or cancellation of the licence. In Part III, the Committee has recommended changes to Section 10 that would give the Board the authority of suspension or cancellation in the cases contemplated.

Section 5(3) of The Public Commercial Vehicles Act now reads:

The holder of an operating licence shall not discontinue any transportation service authorized under his licence until after he has given the Minister ten days written notice of his intention to do so.

A requirement should be added to The Act that licensees who fail to meet the conditions described in clauses a) and b) or who find themselves in a condition described by clause c) of Section 10 must notify the Board with reasons.

Section 5(3) should be amended to require that a licensee notify the Board with reasons at any time that a service specifically authorized by a licence has not resulted in any business for the carrier for a period of six months. This can most easily be applied where shippers or routes or places are named in the licence.

5(3) should be further amended to provide that a licensee may not discontinue any transportation service authorized by the licence without the approval of the Board. In either case, the Board can consider the reasons and publicly decide whether a hearing is warranted to consider suspension or cancellation. It should be an offence for the carrier to fail to notify the Board if the carrier discontinues service.

Furthermore, any party could make application to the Board to have a licence reviewed under the contemplated authority in Section 10 or in an amended 5(3). This would apply to shippers as well as other carriers.

The rate review process recommended by the Committee in Part IV will reduce the possibility of a carrier filing rates designed to cut out all traffic.

#### 5.1.2 Transfers of Dormant Licences

What remains is the recommendation in the Interim Report that dormancy not be a factor in transfer hearings. The Committee received further testimony based on this recommendation. One supplementary brief put the issue succinctly:

It is a fact that the dormancy of some part of his licence is often known only to the licensee. We have some difficulty, therefore, with your recommendation that after an agreement is made for the sale of a transport business, dormancy may not be an issue in the proceedings. We of course, agree that if the transfer application is unopposed, the transfer is approved and the agreement of purchase and sale closed according to its terms that no one should then be allowed to come forward and demand the cancellation of the licence because it was dormant. We do, however, suggest that if it appears to other licensees when transfer application has been made, that a carrier is not selling a business, but has entered into an agreement which amounts to selling a licence authority which is dormant, that that issue should be tried either on a separate day prior to the transfer application's being heard, or at the opening of the transfer application proper.

In our submission, dormancy is an issue in every transfer application because it goes to the root of the question to which the Board must address itself on a transfer application; that is, is there a business being disposed of to which the particular licensee authority is a necessary incident, or is this trafficking in the licence itself with no attendant business being disposed of? <sup>1</sup>

The Committee is guided by the principle that dormant licences should cease to exist and by the thought that new management may be able to re-activate an existing authority newly granted to the transferor.

Perhaps the overriding concept is that of the real nature of a licence. The Public Commercial Vehicles Act now refers to the transfer of an operating licence in Section 7 which provides that:

- 7.-(1) No operating licence shall be transferred without the approval of the Minister, in writing, obtained on application in the prescribed form and payment of the prescribed fee.
- (2) The Minister shall refer an application for approval of the transfer of an operating licence to the Board, and the Board shall hold a hearing and shall report to the Minister whether or not the public necessity and convenience served by the transportation service carried on under the licence will be prejudiced by the transfer of the licence.

- (3) The Minister, the proposed transferor and transferee and such other persons as the Board may specify are parties to the proceedings under this section.
- (4) The Minister shall consider a report made by the Board to him under this section and may thereafter approve or refuse to approve the transfer and the Minister shall give reasons for his decision to the other parties to the proceedings.
- (5) The Minister may require the directors of a corporation that is the holder of an operating licence to report to the Board any issue or transfer of shares of its capital stock and where the Board finds, after a hearing, that the number of shares so issued or transferred affects the de facto control of the operations of the corporation such issue or transfer shall be deemed to constitute a transfer of all operating licences held by such corporation and, unless the transfer is approved, such operating licences shall terminate. 1971. c. 50, s. 71 (5), part.

Theoretically, the Committee would take the view that any licence issued under The Public Commercial Vehicles Act authorizing the holder to conduct any for-hire transportation service is a licence which is the property of the Crown. The Committee could suggest on strong evidence that, consequently, an operating licence cannot be bought, sold or transferred.

Given such a position, Section 7 would have to be considered misleading and inappropriate. If a licence is the property of the Crown, the transferee would make application for a new operating authority and licence, the terms, conditions and privileges of which are identical to those contained in the licence held by the transferor. The applicant would be applying, asking in a sense to be granted privileges which are akin to grandfather privileges. The application would be for a new licence.



However appealing this reasoning might be theoretically, the Committee would submit that the law now reflects reality and would recommend no change. A truck transportation or freight forwarding business is bought, sold and transferred. The price of the business is established by the buyer and seller to reflect its market value including considerations of assets, liabilities and "goodwill". The proposed transferor and transferee of the business concerned make application for the transfer of the licence without which the business cannot be a going concern.

The law correctly provides, recognizing the "grandfather" aspects of the application and the needs of the shippers served under the authority of the licence, that the test to be applied is a "reverse test" of public necessity and convenience.

If this reverse test is to continue to apply, as the Committee feels it should, then there is no harm in considering dormancy in the application proceeding.

If no previous licence was held, an applicant must show that public necessity and convenience will be served by the proposed service. The burden of proof is on the applicant.

In a transfer of business application, the applicant must display that public necessity and convenience will not be prejudiced by the new licence. If an authority which was dormant under the licence in the transferor's name is written into a new licence in the transferee's name, nothing is prejudiced by including the dormant authority.

Given that the service authorized is a new one, it will be subject to

Section 10 of The Public Commercial Vehicles Act as discussed previously. However, if the application is responded to on the basis that the licence includes authority which was dormant, the burden of proof is on the respondent to prove that the dormant authority will in the future prejudice public necessity and convenience.

Implicit in such an argument is the assumption that the authority will be activated by the new licensee. The only way in which it could prejudice public necessity and convenience is by having a direct effect on the respondent carrier. The onus of proof is on the respondent.

Since public necessity and convenience is assumed to be met by the existence of a licence and assuming no dormant authority, the test of not prejudicing public necessity and convenience is generally a test not so much of the authority but of the transferee as a stable and fit person. In fact, it is only in the case of activating a dormant authority that the necessity and convenience of the authority can be brought in question.

It is the Committee's reconsidered view that dormancy must be an admissible issue in transfer hearings. We hasten to add however, that the Board must discourage any tendency by licensees to curtail or eliminate competition by prolonging and otherwise complicating proposed transfers.

#### 5.1.3 The Sale Price

The Committee is concerned about the sale price of truck transportation companies. Testimony has been given to the

effect that the sale price reflects net asset value plus, in some cases, a value for "goodwill".

Others argue that the sale price of the business includes a value (either described or not as goodwill) for The Public Commercial Vehicle Operating Licence held by the transferor of the business. Economists argue that in any market place where entry is controlled monopoly profits can and do accrue to the licensees. They argue further that the price of a sale will reflect the "monopoly rent" allowed and/or achieved by the holder by the existing licence.

Many economists have argued that this theory applies to the sale of Ontario-based and licensed for-hire trucking firms. This issue was of great concern to the Committee, based on the principle that licences issued under The Public Commercial Vehicles Act are the property of the Crown. The Committee believes that substantial values are attached to some licences.<sup>2</sup> It believes that there is a market for some Public Commercial Vehicle Licences.

Figures and opinions with respect to the value of licences abound. To prove the existence and amount of that value is more difficult.

The Committee noted the same concern in other industries to which entry is controlled by a government - for example, taxi licences in Metropolitan Toronto or broadcasting licences where a transfer application is made to the Canadian Radio and Television Commission (C.R.T.C.).

One article on transfers in the C.R.T.C.'s jurisdiction was entitled, "Who Owns the Goodwill?" <sup>3</sup> This succinctly poses the question which faces the regulators of any controlled industry whenever a licence/business transfer is being applied for.

The Committee has been advised that the C.R.T.C. will not intervene in the bargaining between two parties as a matter of principle and that it has enunciated two basic principles to guide purchasers:

1. In the case of broadcasting stations, the price should not imperil the service which the purchaser commits himself to when he submits his Promise of Performance with his application to purchase.
2. In the case of cable television systems, the price should be such that the subscribers will not have to face a rate increase as a result of the sale. <sup>4</sup>

The Committee has considered this matter at great length. It concludes that the Ontario Highway Transport Board, in a hearing precipitated by a business sale should be advised of the price paid so that it may recognize whether the price paid is fair and reasonable. The Board might consider the process practiced by the C.R.T.C. in any rate review hearing.

The Committee concludes that when Public Commercial Vehicle Licences are transferred, a value is sometimes attached to the authority granted by the licences. It considers the concept of a tax on the transfer price appropriate. Because of the difficulties of determining actual goodwill value or licence value, and because any such determination would of necessity be subjective, a tax only on "goodwill" value would be open to abuse and criticism.



## 5.2 Financial Matters

### 5.2.1 Financial Statements

The Committee noted in the Interim Report its questions to carrier witnesses as to their willingness to file financial statements with the Ontario Highway Transport Board. The unanimous response was affirmative.

The Interim Report contained several significant observations:

1. The statements will be confidential for the exclusive use of the Ministry of Transportation and Communications and the Ontario Highway Transport Board.
2. Where the carrier is associated with, or a subsidiary of another company, consolidated as well as individual statements are to be filed.
3. In order to be comparative, statements from carriers should be in similar terms and in accordance with a prescribed standard of accounting. This may take time to become effective and should be accomplished with the co-operation of licensees.
4. Under exceptional circumstances and for good reasons exemptions from filing statements may be granted by the regulatory tribunal for temporary periods. Such discretion may be exercised for entire groups or classes of carriers or in specific cases where the statement is obviously non-productive, for instance when a large manufacturer operates a single licensed unit for backhaul purposes in international operations.
5. In order to make use of the information contained in the statements and to prepare statistics and data from such sources, the regulatory tribunal should employ or consult with qualified accountants.

6. The requirement for a statement duly certified by a chartered accountant may be waived for smaller carriers at the discretion of the regulatory tribunal. In suitable cases it may be sufficient to accept copies of income tax returns, bank summaries or similar equivalents. It is recommended that annual filings be required initially. Two or three years later, filings for alternate periods may be required, at the discretion of the regulatory tribunal.

The Committee strongly adheres to this position in view of its recommendations in Part IV of this Report on rate review. If costs are to be compared across firms, a requirement to file uniform financial reports is essential. Financial statements would be an integral part of the evidence submitted by carriers as justification for a rate proposal.

#### 5.2.2. C.O.D. Charges

The transportation of goods with instructions to collect on delivery is subject to Section 23 of regulation 700 under The Public Commercial Vehicles Act. In these situations, the carrier collects from the consignee the price of the goods being transported. Then it becomes the obligation of the carrier to transmit such funds to the shipper.

There are other ways in which a similar result can be obtained. Order bills of lading have been used for some time. The procedure known as "C.O.D." is a normal, frequent means of collection where credit cannot be extended.

The Committee notes the recommendation of the Alberta Select Committee on Intra Provincial Trucking Regulations that "regulations should be introduced to ensure that C.O.D. funds are remitted within a prescribed number of days after collection and carriers should be required to maintain trust accounts specifically for holding C.O.D. funds".<sup>6</sup>

The Committee is not aware of any case where a carrier failed to remit the amount due to the shipper. There may have been cases in the past where C.O.D. funds were used at plate renewal time for temporary interest-free financing. The absence of any degree of control or inspection over C.O.D. shipments is nevertheless a temptation for hard-pressed carriers.

#### 5.2.3 Credit Terms

The Committee has considered the principle of requiring payment of freight charges within prescribed periods. In many arguments presented, emphasis has been placed on the obligation of a carrier to transport goods offered to him. In this sense, a carrier may not choose his customers in the same way as a merchant or vendor of goods who may refuse to do business with a person whose credit is unsatisfactory.

When a large shipper delays payment of freight charges for thirty, sixty or ninety days, it is apparent that he has saved considerable interest charges. Thus, the same rate quoted by the carrier to two

customers may turn out to be quite different when one customer pays his account within ten days and the other customer pays his account at the end of ninety days. Unfortunately some government accounts are said to be in the latter category.

In the Ministerial Inquiry into the Dump Truck Industry, a recommendation was made that all accounts for transportation services rendered must be paid within thirty days. This recommendation has not been adopted by the Government. The Committee has been advised that the Ministry of Transportation and Communications endeavours to pay transportation accounts in respect of construction contracts within forty-five days.

The obligation of a regulated common carrier to carry should be protected by entitlement to payment. The railways in the United States have had the benefit of such laws since their inception. Price competition through unequal credit extensions by carriers is undesirable. Equal treatment of all members of the shipping public should be sought.

#### 5.2.4 Detention Claims

The Committee was advised of difficulties between a group of grocery wholesalers and carriers arising from detention or delay in unloading a carrier's trailer at the point of delivery. Apparently from time to time, the consignees are unable to unload



promptly after arrival of the merchandise, and the carriers have sought compensation for the extraordinary delay in emptying their trailers. Voluntary mediation was unsuccessfully attempted by the Ontario Highway Transport Board.

Present law does not assist either party in settling such disputes. A tariff of tolls filed by the carrier usually includes rates for collection of C.O.D. charges, special protection from heat or cold or other special circumstances and demurrage arising in the carriage of freight. Disclosure of such charges should be required as part of a carrier's rate structure.

In another part of this Report, recommendations are made on the subject of filing rates and the action to be taken when rates are deemed unsatisfactory by the party required to pay them. Detention claims and demurrage charges should be treated in a similar fashion, giving the aggrieved party the right to appeal or request reconsideration of a rate or demurrage charge which has been filed.

### 5.3 Bills of Lading

#### 5.3.1 Lack of Uniformity

The Committee commented on the absence of a uniform Canadian Bill of Lading in the Interim Report, in part, as follows:

If bills were uniform, a shipper would not be subjected to the confusion and nuisance and therefore cost of determining the provisions of the bill of lading of individual carriers. He could ship his goods with more positive knowledge that the contract of carriage is settled and cannot be changed on the spur of the moment.<sup>7</sup> A common basis for carrier liability and shipper responsibility would exist. Eliminated would be the possibility of unjust discrimination and clarified, would be the duties of connecting carriers in a joint route.

Basic uniform contents for a bill of lading on interstate movements now exist in the United States.<sup>8</sup> In Canada, they do not.

The Committee has heard, both in Canada and in the United States, of the problems which are imposed upon the industry because regulation has tended to be fragmented. Regulations and standards which apply to the industry are largely the requirement of provincial governments, and as a result, differences in approach to what is required, as to terms and conditions of carriage, exist. This has resulted in many different requirements across the country, including differences in bills of lading. This particular problem has been discussed at length, over the years, between government officials, transport boards and representatives of the trucking industry.

The Canadian Trucking Association, in its brief to the Committee, attached a copy of its submission to the Canadian Conference of Motor Transport Administrators (CCMTA) in June of 1976. That submission dealt with standardization in many respects and urged "the essential uniformity in extra-provincial operations...we look to the CCMTA for help in rationalizing the various regulatory matters that affect the overall viability of trucking operations."<sup>9</sup>

At the 1976 CCMTA Conference, a draft uniform bill of lading was reported on by the Standing Committee on Motor Carriers. The CCMTA adopted the following resolution:

Resolved that the Conditions of Carriage and Memorandum of Shipment (Domestic Bill of Lading) prepared by the Federal Provincial Advisory Council on Motor Carrier Regulations in 1972 as revised during this conference be accepted and adopted by all provincial administrations in Canada, with freedom to alter, or to add anything specifically applicable to their respective areas of jurisdiction, as long as such amendments do not negate the general overall conditions as set out therein.

The Committee is informed that the Ministry of Transportation and Communications is examining the bill of lading in conjunction with the representatives of the shipping and carrier segments of the industry.

The Committee is totally in agreement with the concept of a uniform bill of lading for domestic and interprovincial motor carriers. The Committee recognizes that the bill of lading is but one of several regulatory matters which must be dealt with by the provinces, with a view towards standardization. The Committee is well aware of the general lack of uniformity in the regulation of the trucking industry, and that this fact has been and is now being used by the Federal Government as a basis for arguing that new Federal legislation is required in the field. If the provinces cannot negotiate, examine, and agree on methods to bring more uniformity of requirements to the industry, then, the adverse effects on the shipping public and the carriers cannot help but escalate. This is clearly an undesirable situation.

We are also aware of the difficulties in implementing a uniform bill. Uniformity insofar as contents, data and form should be relatively simple to achieve. Difficulties arise when one considers the associated terms and conditions of the bill, particularly as they relate to carrier liability. Ontario law now limits carrier's liability to \$1.50/pound, unless a higher value is specified by the shipper. (Certain other provinces mandate carrier liability to the value of the load.) The shipping public in Ontario, we surmise, are of two minds on this issue. Now, if they declare a higher value, they may face a different rate. On the other hand, if they do not, carrier liability is constrained by \$1.50/pound. This poses real problems for the shipper, particularly in cases of partial loss. To achieve uniformity on this type of issue will be much more difficult.

The Committee, however, urges the Province to proceed with haste to agree upon and implement in Ontario, a domestic bill of lading which is suitable for adoption by all the provinces of Canada.

The Committee intends to discuss in more detail in its final report, the matters of uniformity across Canada and, of industry - government consultation.

In commenting to this effect, the Committee notes that those who have come to testify have expressed various degrees of satisfaction with the current Ontario Bill of Lading. The Canadian Industrial Traffic League was not generally happy with the existing liability clauses. <sup>10</sup>

The Canadian Manufacturers' Association, however, commented that the conditions of the Ontario Bill "are...well drafted...We are opposed to any reduction in the (notice period of 90 days for the filing of loss and damage claims) period which is already none too long." <sup>11</sup>

The Committee has examined the decision of the Supreme Court of Ontario in the case of Direct Winters Transport Ltd. vs. Duplate Canada Ltd., 1962, which delves deeply into the bills of lading question on international movements. <sup>12</sup>

The concept of a uniform bill of lading must be endorsed. The difficulties of implementation are recognized. However, the benefits of its adoption, with terms and conditions agreed to by industry, will far outweigh the costs.

#### 5.3.2 Small Shipments

The Committee commented in the Interim Report on testimony from a group naming themselves the Small Shipment Specialists or "SSS":

This informal group represented four separate companies, unrelated as to ownership, but united with respect to position. These carriers "specialize in the fast, expedited, pick up and delivery of small packages, parcels, letters, documents, valuable items such as jewellery and commodities requiring security such as drugs." <sup>13</sup>

The group amongst other things, sought a new classification, an "S" licence category to denote small shipment specialists. This type of carriage, is in the opinion of the group, the Ontario Highway Transport Board and the Committee, unique when compared to the services being provided by other common carriers in either the "A", "C", or "D" categories.

While the Committee will not comment on the new class of licence at this time, it is important, because the logic for its request is the basis of a further request, namely, an amendment to the regulations in respect of the bill of lading for small shipment carriers.



The Small Shipment Specialists group, as individual carriers, handle "enormously high volumes of small packages or envelopes consolidating them and often carrying thousands of them in one large unit over the highway to a break point...To carry a bill for each of a thousand or two thousand packages or shipments on a van requires (under current provisions) the mounting of a valueless paper was...furthermore, (Current provisions are unenforceable).<sup>14</sup>

The problem arises out of the provisions of The Public Commercial Vehicles Act, Section 12(n), which requires "that, except as provided in the regulations, every holder of an operating licence shall issue a bill of lading to the person delivering or releasing the goods to the licensee...." Regulation 700, Sections 18, 19 and 20 prescribe terms and conditions of the bill of lading. In essence, a bill of lading is required for each and every shipment on board and it must be issued to the shipper at the time the goods are picked up by the carrier.

The intention of the group, which has been discussed with officials of the Ministry of Transportation and Communications at some length, would involve the recording of information on each package carried. Specific papers and documents with respect to the consignment of particular parcels or portions of a total load, would be generated at the carrier's terminal, and would be available for inspection by the Ministry of Transportation and Communications.

In endorsing the principle of a simplified regulation for the small shipment specialists and recommending to the Ministry that it pursue the request to its ultimate adoption, the Committee feels obliged to make certain caveats.

The small shipment specialists testified that rates offered are some fifteen to twenty-five percent below other carriers.<sup>15</sup> They also support amendments to the Bill of Lading on the basis that it will "eliminate paper work because that eliminates costs and enables us to operate more effectively in the public interest."<sup>16</sup>

Given that (1) the testimony of the group did not indicate that they were losing money at current rates given current costs, and (2) the Committee is concerned that while current provisions may be impractical and, therefore, highly unenforceable, a reliance on inspection of carriers' premises may pose new and different problems for enforcement officers, which in fact may be more costly to the government, therefore, the Committee would recommend

that when the amendment to the Regulations is implemented, the Ontario Highway Transport Board keep a careful watch on the rates filed by the carriers who will benefit from the revised provisions, and report to the Ministry of Transportation and Communications any increases, or decreases in tariff in the subsequent year.

The Committee, in acknowledging the responsible representations of the carriers involved, take the view that rationalization of law to the benefit of the carriers through a lowering of cost, particularly where it could mean more cost to the Province for enforcement, should result in a reduction of tariff to the benefit of the shipping public.

The Committee went on to recommend that:

Section 17 of Regulation 700 of the Revised Regulations of Ontario, 1970, be amended by the addition to the exemptions from bills of lading, holders of operating licences which specifically authorize the carriage of small packages. Each package should bear a label showing the names of consignor and consignee, the origin and destination of the shipment, and the number of packages for each shipment. However, such licensees should be required to keep a record at their terminals for two years from the date of shipment showing the same information as on the label described above, and also the gross weight of each shipment, its declared value if any, the amount of freight charges and whether collect or prepaid, together with the signature acknowledging delivery. This record shall be produced when required by an enforcement officer.

Since the Interim Report, the Committee has received representations that the recommended process would be of benefit to other carriers involved with the movement of small parcels, but whose authority to do so was either general or inherent in its licence, rather than specific. The Committee agrees with this suggestion and would therefore extend its recommendation regarding specialized bill of lading provisions to all those licensed carriers, particularly Class A and D, who are engaged in handling small parcels. As pointed out in some submissions, it is likely that small packages will need to be defined, in terms of weight or volume, to give effect to this principle.

#### 5.4 Class H Carriers

Class H carriers are engaged primarily in the movement of used household effects. Recent extensions of their operating authority have enabled them to carry sensitive equipment. The use of protective material within the trailer has encouraged their use for museums, hospitals, factories and public institutions, objects of art, displays and exhibits as well as new uncrated furniture and fixtures that are part of the furnishing of offices.

The Committee is concerned about the homeowner whose furniture is being moved by a public commercial vehicle operated through a national van line. The bargaining power of the individual who may move his household effects once every five or ten years is weak given protective documents, experience and trade practices of the carriers of household goods.

The Committee is aware of industry attempts at self-discipline through an ethics committee. These efforts are commendable. If such a democratic approach could be made applicable and meaningful to all Class H licences, no further recommendations would be required from this Committee. However, for the time being a continuing interest in this area should be shown by the Ontario Highway Transport Board, bearing in mind first the interest of the user of the transportation service and second the interest of the supplier.

The Committee is aware of the elaborate program adopted by the Interstate Commerce Commission to discourage faulty estimates of

charges, unkept promises of delivery dates and undue delays in responding to claims for damages. Information available to the Committee indicates that severe penalties, such as suspension of operations, have been applied to the largest of the U.S. movers. Information and detailed estimates must now be provided to the homeowner by the mover in the United States before the move takes place.

### 5.5 Insurance

Section 21 of Regulation 700 requires insurance for motor vehicle liability as stipulated in Section 2.5 of The Insurance Act and cargo motor vehicle liability as stipulated in the Regulation.

The increasing cost of insurance claims justifies the recent increase of minimum limits to \$100,000 for public liability and property damage. Cargo insurance limits are established by The Public Commercial Vehicles Act and there has been no change in the limits for seven years. At present, the value of cargo insurance required for each vehicle by Section 21 of the Regulation is as follows:

- |    |  |          |
|----|--|----------|
| 1. | Class A, C, D, H, K or T.  | \$ 4,000 |
| 2. | Class FS   | \$ 2,000 |
| 3. | Class E or F   | \$ 1,000 |
| 4. | Road construction materials, iron, steel, coal, rough lumber, or in-destructable or non-flammable nature | \$ 00    |

The Committee received requests from shipping groups to review the cargo insurance limits with a view towards increasing them to reflect more appropriately claims costs today. <sup>17</sup> The Committee agrees there



is a need to increase the amounts required, except for the commodities shown above in paragraph 4. A sample on dump vehicle insurance costs in selected major Ontario cities shows a 75.36% increase in cost for similar vehicles in the period 1974 to 1975.<sup>18</sup> Further premium increases must be examined in the light of increased costs and rates.

There remains for consideration the form of insurance now provided by the cargo insurers. It has not been revised for many years. It contains limitations favouring the insurer which should be reconsidered at this time. For instance, cargo insurance applies only to the theft of an entire shipping package. It applies only in the case of the overturn of the vehicle and does not apply where the load shifts within the vehicle. It does not apply when the commercial vehicle is struck by an oncoming vehicle or when the cargo comes in contact with an overhead object.

In some other jurisdictions, the liability of the carrier is absolute. An example is the United States where the liability for cargo is complete (Interstate Commerce Act). There is no objection, however, if the carrier arranges with the insurer for some form of deductible - but that is not the concern of the public which looks to the insurer for payment.

The Ministry of Consumer and Commercial Relations advised the Committee that:

The cost to increase cargo insurance to cover all perils would differ between companies, but the additional premium would range somewhere between 15% and 20% over the cost for normal coverage. Even with all peril coverage, there would still be some basic exclusions such as infidelity on the part of the broker, loss of market because of the delay in delivery and any nuclear exposure. Most insurers will provide some market for cargo insurance but not all companies would underwrite all types of risks. For example, there are some companies that do not provide insurance for tank trucks and others that do not write livestock carriers.<sup>19</sup>

An instance was published in the Ontario Law Reports where a load was destroyed by fire while resting overnight in the warehouse of the carrier between the time of pick-up and the time of delivery. The Court held that the load was not in transit and that the cargo insurance did not apply.

Schedule A, pursuant to The Public Commercial Vehicles Act, limits liability to \$1.50 per lb. unless a higher value is declared by the consignor on the face of the bill of lading. Having regard to all of the circumstances and desire of the shipper to enlarge the liability for cargo now established by The Public Commercial Vehicles Act, further study is justified, as discussed in this chapter under Bills of Lading. The maximum liability of \$1.50 per lb. has been the subject of debate for some years.

While a move to "all perils" cargo insurance will have a salutary effect on claims settlement in the case of loss or damage, it is likely that the argument over liability per pound will continue. The Committee suspects that the maximum figure should be increased but as in the

case of cargo insurance is unable with information available to quantify the increase necessary. This must be the subject of further government-shipper-carrier research and discussion before the limits can be increased.

#### 5.6 Warehousing

Under The Warehousemen's Lien Act of Ontario (RSO 1970, Chap. 488, Section 2), "Every Warehouseman has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority." The lien is for the amount of the warehouseman's charges, including money advanced for transportation.

The Committee has considered the result of the refusal of a consignee to accept goods sent to him by the carrier and understands that this situation arises frequently. In many instances, the carrier cannot return the goods to the shipper because the shipper refuses to accept them.

Under such circumstances, the carrier keeps the goods, hoping for ultimate settlement between the shipper and the consignee. During that period of time, he is not only unpaid but also exposed to the risk of loss or damage.

The Committee feels that under such circumstances the carrier should have the rights of the warehouseman as outlined in The Warehousemen's Lien Act, namely, a right of disposal under the protections outlined in the statute.

#### 5.7 Sunday Trucking

The Interim Report referred to the transportation of goods on Sunday. In the record of applications to the Canadian Transport Commission over a period of seven years, only one out of 24 applications was denied.

A policy of the provincial Attorney-General was in effect in Ontario for many years. It enabled trucks to operate on Sundays early in the morning and after 10:00 p.m. The Committee's investigations leads it to believe that this arrangement was satisfactory to all concerned.

Unrestricted use of provincial highways on the Lord's Day by commercial motor vehicles is not in the public interest.

Ontario, through the Ministry of Transportation and Communications, has in the recent past appeared as an intervenor in Sunday Trucking Applications before the C.T.C. The Committee received information on the ten cases in which the Ministry did appear, only one of which was in 1976. The C.T.C.'s decision, May 26, 1976 in the case of J.D. Coughlin stated in part:



Counsel for the Government of Ontario, for example, has been frank to admit that the reason for the presence of the Province at these hearings on applications under Section 11 (x) of The Lord's Day Act, is the competition of vehicles for the use of highways of the province. From this frank statement, we must infer that, despite the clear ruling of the Federal Court of Appeal that rejection by the Canadian Transport Commission of considerations of that type was "clearly well founded", the Province is still motivated by the desire that the Commission, somehow, and despite the unanimous ruling of the Court, inject itself, via The Lord's Day Act, into the role of vehicle traffic regulator. If as was reiterated by Counsel for the Government of Ontario at this very hearing, the primary motivation of the Province in appearing stems from a situation of traffic congestion one can only conclude that the purpose of the Province's appearance must be to seek to project the Commission into that traffic regulatory role. We have to say unequivocally that the Canadian Transport Commission cannot occupy that role because, as the Motor Vehicle Transport Committee itself held, and as the Federal Court of Appeal confirmed, it does not have jurisdiction to do so.

Does any department or agency of the Government of Canada have such jurisdiction? We think not. We believe that the Canadian Transport Commission in the event, let us say, that Part III of The National Transportation Act was proclaimed into force, would have jurisdiction and control over an extra-provincial undertaking. However, the Commission would not, we believe, have jurisdiction or control over purely traffic regulatory functions, even of those undertakings with respect to such matters as size, weight and safety and, indeed, matters of vehicle traffic congestion on the highways of the provinces.

We are further disposed to believe that the sole jurisdiction for purely traffic regulations - vehicle traffic regulation - rests with the provinces, and with respect to the application before us, specifically with the Provinces of Manitoba, Ontario and Quebec. In short, if there is a problem with respect to Sunday operation of trucks on the highways of Manitoba, Ontario and Quebec, there is no doubt in our mind that those provinces are seized with jurisdiction - even if the undertaking is extra-provincial - to assert such measures of control as may be necessary to ameliorate any problem of a proper sharing of highway facilities by the various users - the motor car, the "for-hire" truck, the private truck, and the bus.

We find it ironic that Section 11(x) of The Lord's Day Act should somehow be fondly regarded as an umbrella under which regulatory powers over such traffic matters as congestion on the highways, weight of vehicles on the highways, the capacity of truck engines to propel vehicles, could be given weight by the Commission in deciding an application under The Lord's Day Act. The Commission has not got that jurisdiction. It was convinced that it had not got it. It ruled that it had not got it. The Federal Court of Appeal ruled that the ruling that we had not got it was "clearly well founded". We cannot, and we will not, be enticed into what we regard - indeed are now instructed by the Court - is a misinterpretation of The Lord's Day Act. We will not use Section 11 (x) as a cover to reach out and exercise control over motor vehicle traffic on the highways, a field of jurisdiction belonging, in our view to the provinces and having nothing whatever to do with "undue delay" as set out in Section 11 (x) of The Lord's Day Act.

It is not that the Commission rejects responsibility. It is that the Commission rejects the assumption of responsibility which, constitutionally, it does not possess. We reiterate that we find it ironic that we are invited, as it were to possess it.

At a hearing several months ago, Counsel for the Government of Ontario thanked us - that is, the Motor Vehicle Transport Committee - for making our rulings promptly. Taking him at his word, as we know we are justified in doing, we have continued our attempt to make such rulings as promptly as we can, consistent with proper reflection, in each instance, upon the merits of argument put forth. We would not wish, in setting out firmly our views as to the misapplication of responsibility in which, it seems to us, we are being invited to participate, to leave any impression that we do not welcome the assistance given to the Commission by Counsel for the Governments of Quebec and Ontario in testing, through cross-examination, the merits of the case put forward, in each instance, by the applicant. Indeed, we feel that it has benefitted from the appearance of Counsel for the Governments of Quebec and Ontario and I speak equally for my colleague, Commissioner March, as well as for myself, when I say that.

The problem, as we see it, is that the mandate of Counsel seems to seek to project us into areas of jurisdiction in which, under the state of existing law, we do not belong. We must, as I have made clear, decline to go there. The confirmation of that position, unanimously by the Federal Court of Appeal, is proof, we trust, that there was nothing arrogant, arbitrary or cavalier in the taking up of that position originally in the key hearings of the Reimer and Imperial applications. <sup>20</sup>

The Ministry of Transportation and Communications appears to have been singularly unsuccessful in its appearances on Sunday Trucking Applications. The Province has for some time been considering new legislation to regulate the movement of commercial motor vehicles during peak periods, including Sunday, from a traffic point of view. This Committee was advised of an official committee within the Ministry of Transportation and Communications and the Ministry of the Attorney-General, but was unable to determine the status of its investigations. Given the strong and reasonable representations of the trucking industry to the Ontario Government in the past, there is no reason that an Ontario position cannot be publicly enunciated. Certainly there is the constitutional question, but that does not justify the absence of public policy with respect to traffic movements in peak periods.

The Ministry of Transportation and Communications should refrain from supporting or opposing future applications before the C.T.C. under Section 11 (x) of The federal Lord's Day Act.

## 5.8 Recommendations

The Committee recommends that:

1. The transfer or sale of dormant licences be prohibited.
2. Dormancy be construed as meaning a refusal or inability to operate in accordance with the expressed terms and conditions of the licence.



3. Dormancy not exist as long as the licensee holds himself out to the public to provide the transportation service authorized by the operating licence at rates which are reasonable.
4. If a respondent to a transfer seeks to make dormancy an issue in the proceeding, he shall notify the Board in writing and a special hearing on the dormancy may be called by the Ontario Highway Transport Board which would precede the transfer application or the Board may allow dormancy to be an issue in the transfer proceedings.
5. A 5% tax be levied on the gross sale price including goodwill of any trucking business which is operated under a Public Commercial Vehicle Licence.
6. Regulation 700, Section 7 or The Act as necessary should be amended to require the filing of financial statements and details as to the selling price of any licenced for-hire trucking firm in a transfer proceeding.
7. The Public Commercial Vehicles Act be amended to require a licensee to notify and give reasons to the Ontario Highway Transport Board within a prescribed time period when any condition in Section 10 of The Act is encountered or any time that a service specifically authorized in the operating licence has not resulted in any business for the carrier for a period of six months and an offence be prescribed against a carrier who does not so notify the Ontario Highway Transport Board.
8. Section 5(3) of The Public Commercial Vehicles Act be amended to provide that a licensee may not discontinue or discriminate against any service authorized by the operating licence without giving notice to and being given approval by the Ontario Highway Transport Board.
9. The Ontario Highway Transport Board may hold a public hearing to consider any alleged dormancy and may hold a public hearing in cases contemplated by Sections 5(3) and 10 of The Public Commercial Vehicles Act or by recommendations 7 and 8 above. In such a hearing, the Board may exercise all the authority contained in Section 17 of its Act as recommended in Part II, Chapter 7.



10. Financial statements be filed with the Ontario Highway Transport Board by all licensed carriers and registrants at year end, in any rate review hearing and in any hearing on dormancy when requested by the Ontario Highway Transport Board.
11. Over time, statements from carriers should be in similar terms and in accordance with a prescribed standard of accounting which should be developed with the cooperation of licensees.
12. The requirement for a statement duly certified by a chartered accountant may be waived for smaller carriers at the discretion of the regulatory tribunal. In suitable cases it may be sufficient to accept copies of income tax returns, bank summaries or similar equivalents.
13. Annual filings be required initially. Two or three years later, filings for alternate periods be considered by the Board.
14. The statements will be confidential for the exclusive use of the Ministry of Transportation and Communications and the Ontario Highway Transport Board.
15. Where the carrier is associated with or a subsidiary of another company, consolidated as well as individual statements be filed.
16. Under exceptional circumstances and for good reasons, exemptions from filing statements may be granted by the regulatory tribunal for temporary periods. Such discretion may be exercised for entire groups or classes of carriers or in specific cases where the statement is obviously non-productive, for instance when a large manufacturer operates a single licensed unit for backhaul purposes in international operations.
17. Each licensee when filing its annual financial report with the Ontario Highway Transport Board append thereto a declaration stating:
  - (i) the number of C.O.D. shipments on hand,

- (ii) the amount of C.O.D. money in its possession, and
  - (iii) the number of days that the C.O.D. money has been in the possession of the licensee.
18. The Public Commercial Vehicles Act be amended to give effect to the following principles:
- (i) Accounts shall be submitted for payment within ten days of the date of delivery of the shipment,
  - (ii) Payment of freight charges shall be made within fifteen days of receipt of accounts.
19. Demurrage charges be filed with the Ontario Highway Transport Board as part of any normal tariff filing and such charges be subject to review in the same manner as charges for transportation (See Part IV, Chapter 5)
20. When demurrage charges filed are agreed to by particular consignor(s), carrier(s) and consignee(s) and the agreement is filed with the Board, they not be subject to review at the time of filing.
21. The Ministry of Transportation and Communications through the CCMTA and other appropriate forums press for a uniform Canadian bill of lading.
22. The Public Commercial Vehicles Act and/or regulations thereunder be amended by the addition to the exemptions from bills of lading holders of operating licences of any class which permits in law or explicitly by a term of the licence, the carriage of small packages, when and only when such small packages are being transported.
23. The Ministry of Transportation and Communications meet with truckers and shippers to develop a definition of small packages for the purpose of 22 above, which should be prescribed in regulations.
24. When a carrier is exempt from bills of lading by virtue of 22 and 23 above, the licensee shall ensure that each package carried bears a label showing the names of consignor and consignee, the origin and destination of the shipment and the number of packages in each shipment, and the licensee should be required to keep a record at his terminals for two years from the shipment date showing the same information as

on the label described, the gross weight of each shipment, its declared value if any, the amount of payment of freight charges and the method of payment together with the signature acknowledging delivery.

25. Each Class H licence or Class A carrier authorized to carry used household furniture on completion of the delivery furnish to the consignee an addressed form on which the licensee shall set out the details of the move and the consignee may state therein the degree of satisfaction or dissatisfaction with the performance of the carrier and the reasons for this opinion. The form shall be addressed to the Secretary of the Ontario Highway Transport Board at Toronto and shall be signed by the deliverer at the point and time of delivery.
26. The telephone number of the Ontario Highway Transport Board's "Hot Line" should be placed on the form in 25 above for the information and use of the consignee. The purpose of the Hot Line as described in Part II, Chapter 5, be described on the form.
27. The Public Commercial Vehicles Act be amended to require that any person transporting used household goods provide an estimate of the costs of a movement to the consignor of any goods carried under its authority prior to the movement of the goods.
28. The Ministry of Transportation and Communications in conjunction with Class H carriers develop an appropriate schedule with a view towards establishing the maximum limits by which actual charges by Class H carriers may exceed the estimate of the cost given to the consignor.
29. The amount of cargo insurance specified in Section 21 of Regulation 700 be increased to an amount justified by current claims experience. These amounts should be reviewed on a periodic basis.
30. The increase of liability of the carrier for cargo to all perils and the \$1.50/lb. liability be priority subjects for consideration of the Advisory Council to the Minister of Transportation and Communications as recommended in Part II, Chapter 3.
31. Failure on the part of the Advisory Council to conclude these matters within one year of the date of this report shall be cause for revising the form of cargo insurance to give complete protection to the shipping public.

32. The Warehousemen's Lien Act be amended to enable a carrier who is unable to effect the delivery of a shipment and after proper notice to both shipper and consignor, to deliver to a public warehouse. The warehouseman may then pay the carrier the transportation charges and obtain a lien therefor against the shipment.
33. The Ontario Government decide and publicly state whether it intends to regulate the movement of commercial motor vehicles from traffic volume and highway safety considerations on weekends, holidays or at other specific times.



PART VI - CHAPTER 5

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8. Ibid, Page 10 - 19.
9. Canadian Trucking Association Brief, Appendix A, August 13, 1976 Page 1.
10. Op Cit., Canadian Industrial Traffic League Brief #1., Page 14.
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19. Ministry of Consumer and Commercial Relations, In a letter from M.B. Dawson to B.B. Caldwell, February 23, 1977.
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**PART VII**  
**Conclusions**  
**and**  
**Summary of**  
**Recommendations**





## PART VII

### CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

#### 1.1 Conclusions

The terms of reference for the Committee set out responsibilities as follows:

to examine, investigate, enquire into, study and report on all matters pertaining to the transportation in Ontario of goods on Ontario highways including all matters affecting or pertaining to the shippers of goods and the transporters of goods whether for gain or not for gain...

The need to establish the committee was the result of many and varied factors. A storm existed in the Spring of 1976 at the centre of which was the controversial Bill 4. The storm cast its shadow on the very principles of The Public Commercial Vehicles Act.

This Act, its principles and provisions, have necessarily been the central subjects of the Committee's deliberations. This Act alone established for the people of Ontario the ways in which the commercial transportation of goods on their highways is to be regulated.

This Act, either implicitly or explicitly, sets out the economic regulatory controls which this and previous Governments of Ontario have chosen to apply to the movement of goods. The implicit exceptions include those segments beyond the constitutional jurisdiction of the Province, private transportation, transportation brokers and

vehicle leasing companies. Explicit exceptions include those carriers who operate totally within an urban zone and/or who transport "exempt" commodities, products of and from a farm or forest.

The Committee was directed to study only the movement of goods on Ontario highways. This cannot be done without considering other modes of transportation such as rail and waterway. In particular cases, one mode affects another and they can be direct competitors. Whether or not two modes are competing for a particular market will affect the structure, behaviour and therefore the performance of the motor carrier industry.

An examination of the movement of goods by highway necessitates consideration of vehicles which are not public commercial vehicles - for example, private trucks, trucks in urban municipalities and cars carrying parcels.

It also requires consideration of firms which are not public commercial vehicle operations - for example, brokers, freight forwarders, manufacturers and shippers.

Implicit is the requirement to consider other government policies such as municipal autonomy, regional development and labour relations.

Transportation cannot be viewed in isolation from these other complex areas. It provides a bridge between supply and demand, seller and buyer, producer and market, surplus and deficiency. It makes an essential contribution to a higher standard of living for those whom it serves.

The Public Commercial Vehicles Act must deal either implicitly or explicitly with such diverse matters as:

- for-hire motor carriers
- private motor carriers
- freight forwarders
- shippers and their role in the transportation system
- brokers of transportation services
- lessors of commercial motor vehicles.

If the Act is to be properly written and administered, those involved must consider:

- The British North America Act
- regional development policies of the Ontario Government
- the role of municipalities in governmental administration
- land use planning
- industrial growth patterns
- the nature and degree of intermodal cooperation
- the nature and degree of intermodal competition
- corporate ownership policies of the Ontario Government
- transportation related educational programs
- energy policies of the Ontario Government
- safety programs for commercial vehicles
- the bus industry
- the taxi industry
- taxation policies with regard to sales, fuel and gas
- "user pay" principles
- political and economic relations with neighbouring jurisdictions and
- how the capability to transport goods in Ontario by highway is affected by or affects these factors and policies.

In summary, The Public Commercial Vehicles Act is not and cannot be limited to the establishment of law and policy only for public commercial vehicles.

As stated in the Introduction, this Report represents the Committee's efforts to analyze realistically a massive compilation of information.

The Committee has written this Report not only for the Legislature, civil servants and those directly involved in truck transportation,

but for the people of Ontario who deserve an efficient and viable truck transportation system.

The Committee has provided a catalyst for thought about the movement of goods in Ontario. The Committee will not by the publication of this Report close the door on many significant issues. The trucking industries in Ontario are vast, their activities are diverse and their links to virtually all other sectors of the economy are complex. The movement of goods is by any standard critically important to Ontario's economic and social well being.

It would be shortsighted not to continue and expand research in a sector of the economy so vital.

If the Committee could suggest only one action which would reflect its impressions of Ontario's goods moving industries it would be something to indicate diversity, complexity and the need for future policy making to view transportation comprehensively, in all its facets.

With that in mind, the Committee further recommends, as its conclusion to this subject for the time being, that:

The Public Commercial Vehicles Act be replaced by an act entitled and cited as "The Ontario Transportation Act" to indicate more properly the concepts, policies, terms and conditions with which it deals. This change would focus the true purpose of The Act and encourage the Government and the public to regard transportation in the comprehensive fashion that is necessary.



## PART II

### Chapter 3

#### MINISTER - OHTB RELATIONSHIPS

If the Board is to play a significant role within the context of a ministerial portfolio, legislation and procedures must be developed to ensure that the agency will be an effective mechanism for program delivery.

The Committee recommends that the appropriate statutes be amended to provide that the Ontario Highway Transport Board:

1. is constituted to serve the public interest by acting on behalf of the Minister to promote and ensure to the extent of its powers a truck transportation system which is efficient and viable and provides service to all parts and shippers of Ontario where it is needed at the lowest possible cost;
2. will hold an advertised public hearing or a hearing in Chambers when and where it is required by law or when and where the Minister requests it;
3. will find and inform the Minister whether public necessity and convenience is served or not served by applications before it where required by law or requested by the Minister;
4. will report on facts, trends or situations as requested by the Minister;
5. will consider, in its findings of public necessity and convenience, such facts and criteria as the Minister may from time to time publicly direct in accordance with provisions 7, 8 and 9 below;
6. where a decision of the Board is contrary to the intent of any facts or criteria directed by the Minister to be considered, the Board will report its reasons to the Minister.

Further, the appropriate statutes should be amended to give effect to the following principles:

7. the Minister may from time to time require the Board to hold a hearing or investigation and to report to him on such terms and conditions as he specifies in writing to the Board, and
8. The Minister may appoint an Advisory Council with selected representatives from the private sector who possess a special expertise in the field of transportation.

9. the Minister may from time to time, provided that he has informed and consulted with the Advisory Council, direct the Board to consider such facts and criteria, circumstances, laws or policies in future hearings or investigations or in its determination of public necessity and convenience, provided further that such directions are public knowledge.

It is also recommended that -

10. the Minister and his senior staff establish and maintain a forum for regular joint discussions with the Chairman and other members of the Ontario Highway Transport Board and senior staff to discuss and assess policies and practices of the Board.

## PART II

### Chapter 4

#### PUBLIC NECESSITY AND CONVENIENCE

The Committee recommends that:

1. The test of public necessity and convenience continue to be the test of entry and expansion within the for-hire trucking industry.
2. The Board be left free to exercise discretion and to determine in individual cases whether public necessity and convenience is served.
3. The Minister from time to time direct the Board to consider such facts, criteria, circumstances, law or policies in findings of public necessity and convenience (Subject to the recommendations in 3.3 of this Part of the Report).
4. This policy must not be used to direct the Board to particular directions in particular cases.
5. The above not inhibit the existing authority and responsibility of the Board to consider all circumstances of fact or law within its jurisdiction.
- 6.(i) Subject to the recommendations 2 and 5 above, the Minister publicly provide guidelines to the Board that, inter alia, and so as not to limit the flexibility and scope of the Board's deliberations, it should take into consideration when hearing future applications for operating authority, an extension of operating authority the following:
  - (a) the provision of loads to and from places and/or on routes and the empty or partially loaded miles which could be avoided if the application is granted or rejected;
  - (b) the stability and quality of relationships between the carrier and owner drivers who work under the authority of the carrier's licence;
  - (c) the type and quality of advertising and past service by the carrier;

- (d) the proposed tolls in relation to existing tolls;
- (e) the record of the objector or applicant who delays recognition of claims for damages or delay in the transportation of goods;
- (f) the recommendations or orders issued by the regulatory and/or administrative agencies in the home domicile of the applicant or carrier who is a non-resident of Ontario;
- (g) the maintenance of an effectively competitive for-hire motor carrier industry.
- (h) other facts or circumstances which the Board deems relevant such as operating record and payment of fines and penalties.

6.(ii) The Board consider such of the above factors as are relevant, and other appropriate guidelines in dealing with applications for transfer, reviews, or consultations with other regulatory Boards or Commissions.



## PART II

### Chapter 5

#### THE BOARD - INFORMATION AND THE HEARING PROCESS

#### VII - 9

The Committee recommends that:

1. That the Board consider the publication of pamphlets and other appropriate literature to describe to the public and to shippers and to applicants, the law and processes which surround the operation of the Board and its decision making process.
2. First priority should be given to a publication of carriers and capacity by location served.
3. The Board establish a toll-free hot line to augment its other information services and the number be highlighted in regular publications of the Board and the Ministry.
4. High priority be given to disseminating information regarding household goods movements.
5. The Ministry of Transportation and Communications and the Ontario Highway Transport Board examine together the feasibility of automating the issuance of Public Commercial Vehicle (and Public Vehicle ) licences and storage of licensing records. An effective automated system would assist the administration of the law and policies and make it more efficient. It would facilitate policy evaluation and the dissemination and interpretation of facts, figures and information for the public and the industry.
6. The Ministry of Transportation and Communications and the Ontario Highway Transport Board examine together the feasibility and potential of automating appropriate portions of the "rate filing system".
7. The Board publish an indexed collection of its written Reasons for Decision on a continuing basis.
8. The Board experiment with a broader advertising program for proceedings of general public importance.
9. The Board take steps to continue and expand its program of out-of-town hearings and make the public aware of the option in its information pamphlet and applications forms.
10. Unopposed applications to the Board be disposed of without a public hearing. To facilitate early disposition the Board should cause all applications to be published within 16 days of filing with an appropriate time period thereafter for oppositions and interventions by all parties. Opposed applications should be scheduled for hearing in consultation with all parties.

11. Contested cases before the Board also be handled without a hearing if all parties consent.
12. The Board appoint one or more examiners who would under the direction of a member of the Board,
  - (i) deal with individual requests for information not requiring the attention of a Board member,
  - (ii) interview and counsel prospective applicants on request prior to filing, and
  - (iii) assist both applicants and opposing parties to narrow issues prior to a public hearing.
13. The Board's application forms be revised to require much more information. The Interstate Commerce Commission application form provides one useful model.
14. Applicants be required to disclose to the Board support at the time of filing and if the Board is of the opinion that the applicant and his witnesses will not be prejudiced, the Board may make particulars of the application in full or in part, public.
15. After a modified proceeding, the entire application will be a public document.
16. Frivolous oppositions be discouraged and an appropriate awarding of costs be made by the Board. Every objection filed must be accompanied by a filing fee.
17. An administrative appeal be established within the Board, where the appeal panel includes at least one of the Chairman or a Vice-Chairman. The appeal be restricted to questions of policy or law and errors of fact fundamental to the decision appealed from but totally without support from the evidence. The appeal panel consider the transcript, agreed facts or, in exceptional cases, additional evidence.
18. Two types of non-permanent authority be available:
  - (i) Emergency authority: granted without notice in the discretion of the Board for a period not to exceed seven days and may involve only a single movement. Sworn evidence should not be a prerequisite. The authority should be non-renewable.

Every emergency authority should be publicly posted by the Board at its offices on the date it is effective.

- (ii) Interim authority: granted for expiry on a fixed date or automatically on disposition of a related permanent application, if any. It may be preceded by the granting of an emergency authority. Notice of the application should be posted publicly at the Board's offices prior to its consideration at a regular weekly sitting of the Board, presided over by the Chairman or a Vice - Chairman, to deal with interim applications on an expedited basis.

The Board should encourage informality and not insist on normal evidentiary standards at these weekly sittings. Interim authority should be granted only if the Board is satisfied that an immediate need exists.

Once granted the interim authority should not be cancelled or revoked before its normal expiry except upon evidence, at a subsequent weekly interim application hearing, of substantial harm to an existing carrier prepared to provide the required service or violations of the law by the interim licensee.

19. The Ministry of Transportation and Communications, along with the Ontario Highway Transport Board and the Law Society of Upper Canada, in conjunction with the Ministry of Colleges and Universities, other interested governmental and non-governmental agencies and groups consider the establishment of a program at the Community College level offering a practitioner's diploma which would enable graduates not authorized under The Law Society Act to practice for compensation before the Ontario Highway Transport Board.
20. The group established meet and report to government with its findings as to feasibility and costs of such a program within six months of this Report.
21. These recommendations be considered and implemented in conjunction with the Committee's other recommendations regarding education.
22. The Minister of Transportation and Communications appoint the Chairman and a Vice-Chairman of the Board, two members of the Bar and one person designated by the Attorney-General to a Rules Advisory Committee. The Committee would review and recommend improvements to The Ontario Highway Transport Board procedures on a regular basis.



23. Members of the Board not appear as a solicitor for or as an agent on behalf of private parties in any proceeding before the Board for a period of not less than six months after severance (by retirement or for any other reason) from the Board.
24. All parties filing documents at the Board pay filing fees in amounts to be determined by the Board. This should include not only the filing of objections by respondents to applications but also filings by intervenors in review proceedings.
25. Gazette publication of notices of appeal be confined to an abbreviated reference to the proceedings without setting out the detailed grounds alleged by the affected party.
26. A register be kept at the reception desk at the premises of the Board in which will be recorded the names of all persons (and their principals) attending on members of the Board.
27. All copies of documents in the custody of the Board or particulars of any certificate, order or licence issued by the Board be subject to a fee which will approximate the cost of the service rendered.
28. The Board assess costs against the parties concerned in proceedings which,
  - (a) extend beyond one business day,
  - (b) require the attendance of Board officers outside its chambers, or
  - (c) involve the preparation of a transcript.
29. The Board require all licensees to respond to complaints within 30 days.
30. The Government consider the potential benefits of the Board engaging part time or temporary members.
31. The Board should accept recommendations from the Rules Advisory Committee as to a Board power to appoint counsel to act for or on behalf of any party in a proceeding and the removal of counsel for cause.



32. The Board be given statutory power to convene meetings with other boards, commissions or agencies of Government, at its premises in Toronto or elsewhere within or without Ontario and conduct public hearings together with the members or staff of other tribunals or departments of Government as directed by the Minister and the Board may conduct proceedings, issue orders and render decisions as if the matters considered at joint hearings had been conducted exclusively by the Board in Ontario under The Ontario Highway Transport Board Act, The Public Commercial Vehicles Act or The Motor Vehicle Transport Act.
33. The Chairman of the Board together with one or more Vice-Chairman may exercise whatever measures are required for the reasonable discipline of the other members of the Board and may, for cause, suspend such members.
34. The Chairman of the Board or other members of the Board or staff deputized by him for the purpose may prepare lists of and dates for hearings, itineraries for other members, may order other members to produce written decisions within a reasonable time following the conclusion of a hearing or other proceeding.
35. In the event of a difference of opinion amongst members of the Board, the Chairman may reopen the proceedings for further consideration by the original panel together with such other members as may be assigned thereto.

## PART II

### Chapter 6

#### RESPONSIBILITIES AND FUNCTIONS OF THE BOARD

The Committee recommends that:

1. The Ontario Highway Transport Board retain the services of appropriately qualified professionals to undertake analysis of statistical, financial, tariff and other information which flows to the Board in the course of its duties and which must be analyzed to make decisions on matters before the Board.
2. The Board, in so doing, not duplicate the expertise now resident in the Ministry.
3. The Ministry , through its appropriate offices, continue to conduct studies of the trucking industry and the overall freight transportation system with a view particularly towards planning for legislation, government's role, policy formulation and evaluation.
4. The Ministry and the Board establish formal working level contacts to exchange information and to coordinate respective efforts in areas of mutual interest.
5. The Minister establish and maintain a forum for regular joint discussions with the Chairman and other members of the Ontario Highway Transport Board to discuss, establish and assess policies and practices of the Board.
6. The Board request ministry staff to appear on any matter that requires the Board to be informed of any particular policy, fact, circumstance or law on which the Ministry has expert knowledge.
7. The appropriate Acts be amended to empower the Board to issue licences under The Public Commercial Vehicles Act.
8. The Public Commercial Vehicles Act be amended to require the Board to furnish the Minister with a copy of the licence in any case one is issued or amended or a report in any case it is so requested by the Minister or in any case a cease and desist order is issued.

9. The responsibilities of the Highway Carrier Office regarding administration of The Public Commercial Vehicles Act and sufficient staff be assigned to the Board.
10. The Ministry consider assigning the functions related to The Public Vehicles Act from the Highway Carrier Office to the Board.
11. The Board as a matter of policy consider the retention of auditors, statisticians, economists, journalists, members of the bar or tariff experts, etc. when necessary to facilitate its processes.

## PART II

### Chapter 7

#### ENFORCEMENT

The Committee recommends that:

- 1) The Board be assigned the number of qualified investigators and the number of patrol cars and staff to enforce the provisions of The Public Commercial Vehicles Act and The Motor Vehicle Transport Act effectively.
- 2) The Board's role, manpower and activity not be duplicated by the Ministry.
- 3) The Ministry consider like changes to its and the Board's role in the enforcement of The Public Vehicles Act.
- 4) Non-resident carriers, brokers, lessors, driver pool operators appoint an agent resident in Ontario. The non-resident file a power of attorney authorizing the agent to accept service of notice or process on its behalf.
- 5) The non-resident file an undertaking to appear in any action or proceeding of which the agent or the non-resident has knowledge.
- 6) The non-resident file an undertaking not to set up as a defence to any claim, action or proceeding a defence that could not be set up if the agent had not been appointed.
- 7) Non-resident carriers of exempt commodities be registered in Ontario and provide
  - (i) For single trips, the name and address of the driver and of the owner of the vehicle; the licence or registration number of the vehicle; the point of entry into and departure from Ontario; the nature and weight of the cargo; the origin and destination of the trip and whether intermediate pick ups or deliveries are to be made; the names of the shipper and of the consignee; the gross weight of the truck, tractor or trailer (hooked up); particulars of insurance for (a) public liability and property damage and (b) cargo; whether fuel tax paid or to be paid or exempt; whether sales tax on vehicle is paid or to be paid or exempt and particulars of operating authority (if any) from any other jurisdiction.



- 7) (ii) Annual. The name and address of the owner of the vehicle; the number of vehicles (a) owned or (b) leased at the date of registration; particulars of insurance for (a) public liability and property damage and (b) cargo; whether fuel tax paid, to be paid or exempt; whether sales tax paid, to be paid or exempt; general nature of commodities to be carried and destinations in Ontario; name and address of an office in Ontario where notices can be sent; particulars of operating authority (if any) from other jurisdictions.

Registration would be subject to review by the Ontario Highway Transport Board.

- 8) A system of title law be implemented in Ontario dealing at the minimum with the ownership of commercial motor vehicles.
- 9) Section 15(c)1 of The Public Commercial Vehicles Act should be amended to the effect:
- any officer of the Board may at any reasonable time examine all books, records and documents of the holder of an operating licence or any person who is or whose operation is registered under the authority of this Act.
- 10) Section 15(c)2 of The Public Commercial Vehicles Act be amended to the effect that:
- in addition to any other action taken under this Act, the Minister may appoint one or more persons to make investigations under this section which may be initiated at any time that a person appointed believes on reasonable and proper grounds that any person has contravened any of the provisions of this Act or the Regulations.
- 11) Effect be given to this amendment by the appointment by the Minister under the new 15(c)2 of an appropriate number of investigators who will be attached to the Ontario Highway Transport Board.
- 12) Any investigation conducted under this section shall result in a report from the investigator to the Board with indication as to whether charges have or will be laid as a result.
- 13) The report of the investigation shall be made available to the person(s) being investigated.

- 14) Complementary amendments be made throughout the Act where necessary to reflect that the Board is the Agency of enforcement.
- 15) Section 17 of The Public Commercial Vehicles Act be repealed.
- 16) The relevant Act be amended to give effect to the following principles
  - (i) The Registrar may at any time in any case in which he intends to initiate action under Section 27 of The Highway Traffic Act direct terms of reference to an investigator appointed by the Minister under The Public Commercial Vehicles Act and the investigator shall conduct an investigation and report the findings to the Registrar.
  - (ii) Any report of any investigation shall be made available to the person(s) being investigated.
- 17) The Public Commercial Vehicles Act should be further amended to give effect to the following:

An investigator appointed under Section 15(c)2 of this Act may detain such commercial vehicles as are relevant to the subject matter of the investigation until a bond has been deposited in an amount of one thousand dollars for each vehicle detained. The said bond shall be in a form approved by the Board and shall be deposited at the office of the Board in Toronto or at any district office of the Ministry and shall be conditional upon the appearance of the person being investigated at a time and place to be fixed following the receipt of the report in the preceding subsection. In the event that a bond is not deposited within a reasonable time, the detained vehicle may be stored in a public warehouse subject to The Warehousemen's Lien Act of Ontario, and upon the conclusion of the said inquiry, any bond in connection therewith shall be cancelled and returned to the party which has deposited the same.

- 18) The Public Commercial Vehicles Act be amended to increase substantially the fines applicable to all operating or Public Commercial Vehicles Act registration related authority offences and to make jail terms an alternate form of punishment for such offences.
- 19) That fines be scaled, with heavier liability being imposed in the following priority:
  - (i) offences relating to the provision or use of unlicensed for-hire transportation, or to contravention of a cease and desist order,
  - (ii) offences relating to the provision or use of unregistered services of leasing agencies and unregistered activities of brokers,
  - (iii) offences relating to the provision of a transportation service which is beyond a carrier's existing operating authority under The Public Commercial Vehicles Act and/or The Motor Vehicle Transport Act,
  - (iv) other offences.
- 20) Repeated violations bear correspondingly heavier penalties.
- 21) Injunctive procedure be authorized by suitable amendment to The Judicature Act or other relevant legislation.
- 22) An offence be prescribed in The Public Commercial Vehicles Act for "any person who knowingly engages a for-hire transportation service which is not properly licensed or registered as required by The Public Commercial Vehicles Act or The Motor Vehicle Transport Act or who knowingly conspires or assists in the contravention of any other provision of the two Acts.
- 23) (i) Section 27 of The Highway Traffic Act be amended to delete from subsection 1 reference to The Public Commercial Vehicles Act and The Public Vehicles Act and further by adding a subsection to the effect of the following:

- 23) Where a person who is not licensed or registered as required by The Public Commercial Vehicles Act or Motor Vehicle Transport Act has been convicted on two or more occasions of contraventions of sections 2(1)a, 3(4) or 4 of The Public Commercial Vehicles Act or section 3(1) of The Motor Vehicle Transport Act, the Registrar may after offering an appropriate hearing cancel the permit and confiscate the licence plates of any vehicle to which the person holds title or which is registered or leased in the person's name or in which the person holds a beneficial interest, and no further or other licence or permit shall be issued to such person until the Registrar approves.

(ii) Existing subsections 2) and 3) be amended in a complementary way to reflect the new subsection above and prescribe the appropriate offences.

- 24) Section 17 of The Ontario Highway Transport Board Act should be amended to the effect that:

The Board may at any time and from time to time rehear any application and may at any time for continued violations of law and/or for complaints about the type and quality of service offered or the rate being charged and/or failure to observe filed tariffs, review, amend, or revoke its decisions, orders, directions, certificates, or approvals.

As a result of such a review the Board may amend suspend or cancel any licence or registration issued under the authority of The Public Commercial Vehicles Act or The Motor Vehicle Transport Act, confirm, delete or change any terms, conditions or restrictions in the licence or add new terms, conditions or restrictions.

- 25) The Board may not suspend, cancel or amend an operating licence or registration without giving the opportunity for a public hearing and holding one where and if requested subject to the provisions of The Public Commercial Vehicles Act and The Ontario Highway Transport Board Act.
- 26) The Board in initiating any review or rehearing must give prior and confidential notice to the holder of the licence or the permit being reviewed a suitable length of time before the details of the hearing are published.



- 27) The Board may discontinue the review on its own motion at any time but must give reasons therefor to the parties and to the public.
- 28) The Board may assess costs in such a hearing.
- 29) The Government carefully monitor the exercise of this authority by the Board having regard to an appropriate appeal system.
- 30) The Public Commercial Vehicles Act with particular reference to Sections 8, 12h and 12i be amended to give effect to the following principle:

The Minister may at any time direct the Board in writing to institute a review or hearing under Section 17 of The Ontario Highway Transport Board Act and may make whatever related information available to the Board as he deems fit at the time of the direction, and the Minister shall be entitled to and receive from the Board a full written report of its findings and actions with reasons therefor.

- 31) The Highway Traffic Act be amended to permit highway carrier enforcement patrol cars to carry and display a red flashing signal light.
- 32) The Board may suspend or revoke a licence for non-payment of fines under The Highway Traffic Act or of taxes under The Motor Vehicle Fuel Tax Act.

## PART III

### Chapter 1

#### PROVINCIAL ROLES AND RESPONSIBILITIES

The Committee recommends that:

1. The Province of Ontario, through the Minister of Transportation and Communications, continue to demand roles and responsibilities in the regulation of extra-provincial trucking which are strong and substantively the same as now afforded by the Motor Vehicle Transport Act;
2. Ontario take a leading role in discussions to bring uniformity to the provincial regulatory schemes through the Canadian Conference of Motor Transport Administrators and through other appropriate forums;
3. Ontario promote and encourage joint hearings of regulatory bodies on matters involving extra-provincial motor carrier undertakings;
4. Ontario take a broad view of the necessity for uniformity in terms of taxation, economic and non-economic regulations and enforcement;
5. Ontario's primary goal in such discussions be to make as efficient as possible the movement of goods by highway to the benefit of shippers, carriers and the general public.

## PART III

### Chapter 2

#### CONTROL OF ENTRY TO THE FOR-HIRE TRUCKING INDUSTRY

The Committee recommends that:

1. The Ontario Government through the Ontario Highway Transport Board continue to apply economic regulatory controls to for-hire trucking operations in Ontario, consistent with the principles and specific recommendations in this Report.
2. Effective competition be enunciated as a primary goal of entry control, subject to the needs of communities removed from major markets.

## PART III

### Chapter 3

#### OPERATIONAL CONTROLS AND THE LICENSING PROCESS

The Committee recommends that:

1. The current licence classification system be retained;
2. The Ministry of Transportation and Communications in conjunction with the Ontario Highway Transport Board and industry review and report to the government on ways and means to simplify the description of authorities and the terms, conditions and restrictions in licences;
- 2a. The Ministry of Transportation and Communications in conjunction with the Ontario Highway Transport Board and industry then apply the principles of simplification to the classification system with a view towards "declassifying" the licensing process, particularly as it relates to common carriage of general freight;
3. The Ontario Highway Transport Board put emphasis on naming places in licences;
4. The inconsistency in the regulations between the definition of a Class A carrier and the form of a Class A licence be removed;
5. Existing operating licences containing erroneous highway numbers be corrected by the Ontario Highway Transport Board to clarify the authority of the licence;
6. The Ontario Highway Transport Board minimize references to commodities in operating authority descriptions, except in cases where special equipment or handling is needed to transport the commodity efficiently and safely;
7. The Ontario Highway Transport Board not limit a carrier's ability to expand by imposing unnecessary restrictions on fleet size or capacity;
8. Exclusive of K, H, T and R licences, the Board reference particular vehicle types in authority descriptions where it will facilitate enforcement;



9. Statistics be produced to indicate the number of licences of each class and the number of privileges held by each class of licence and the number of separate firms which hold those licences and privileges;
10. The Ontario Highway Transport Board in granting any extension or making any other change to a licence, incorporate the change into the description of the authority to designate the authority by commodity, by place, by route or by some other recognizable item within the licence;
11. A program of rewriting operating licences be assigned to the Ontario Highway Transport Board with instructions to simplify each authority in keeping with the findings obtained through the implementation of recommendations 2 and 2a above;
12. A licensed carrier be specifically permitted in law or by policy, as the case requires, to lease a vehicle and a driver from another licensed carrier for a single trip which is authorized in the former carrier's operating authority provided that the vehicle has a vehicle licence in accordance with the Act and
  - (i) the front-haul of the lessor is in accordance with his operating authority;
  - (ii) the backhaul or leasehaul is in the general reverse direction of the fronthaul;
  - (iii) the lessee licensed carrier shall assume all responsibility for the move as if the truck were owned;
  - (iv) the lessee licensed carrier obtains from a member of the Ontario Highway Transport Board verbal, written or telegram authority to enter into such an arrangement.
- 12a. The Ontario Highway Transport Board review any and all such approvals of trip leasing arrangements between licensed carriers to ensure that their use is not on a continuing basis;
13. The word "rights" be replaced by the proper word "privileges" in The Public Commercial Vehicles Act to describe that which is conveyed to the recipient of a Public Commercial Vehicle Operating licence;

14. The Ontario Highway Transport Board publish as soon as possible a complete directory of licences and trucking services;
15. The division of Ontario at North Bay for the purposes of the Public Commercial Vehicles Act be varied to accord with current conditions. All licensees now restricted be allowed to apply for the removal thereof. The Ontario Highway Transport Board select a date at which all such applications will be consolidated and heard together. The interested shippers or receivers of goods moving north and south of North Bay may appear at the hearing of such applications and support all or some of the applicants. Announcements of the hearings be given wide publicity in all of the media in northeastern Ontario;
16. Licensing regulations should be enforced with respect to the movement of lumber from and to the northeastern part of Ontario;
17. The Ontario Highway Transport Board should review the service by "A" carriers north of North Bay to ensure that the principles of competition and public necessity and convenience are being met.
18. The regulations affecting truckload or Class "C" for-hire carriers under The Public Commercial Vehicles Act be amended to permit interchange of trailers and transfer of loads within the terms of their operating authorities. A restriction in Regulation 700 of Section 2(2)(b)(vi)a, which reads as follows:

Where the terms of the operating licence authorize the transfer of goods, or interchange of trailers, and...

be deleted.

### PART III

#### Chapter 4

#### PRIVATE CARRIAGE

The Committee recommends that:

1. The current regulations under The Public Commercial Vehicles Act which set out the fees for Public Commercial Vehicles vehicle licences for operators of Class A, C, D, T, K and H be repealed.
2. In place thereof, a flat fee regardless of vehicle size be substituted to cover only the administrative costs of issuing Public Commercial Vehicle plates.
3. Immediate consideration be given to amending The Public Commercial Vehicles Act to exempt from licensing a company which is transporting only the goods of a related company subject to wholly common ownership or alternatively, to deem "public necessity and convenience" found in the application in the predescribed situation.
4. Employers as an option should be able to pay Workmen's Compensation assessments quarterly or annually.
5. The Ministry of Labour include all truck drivers in a single category for the purpose of Workmen's Compensation.
6. Non-resident carriers not be assessed for Workmen's Compensation if they do not employ Ontario workmen and if they are similarly and adequately insured in their home jurisdiction.
7. The current exemption of private carriage from the provisions of The Public Commercial Vehicles Act be retained.

## PART III

### Chapter 5

#### MARKET STRUCTURE

The Committee recommends that:

1. The Ministry of Transportation and Communications coordinate a study to determine the concentration of ownership and the degree of foreign ownership within the Ontario for-hire trucking industry.
2. The Ministry report its finding and recommendations to the Government.



### PART III

#### Chapter 6

##### CARTAGE

The Committee recommends that:

1. The Public Commercial Vehicles Act be amended to give effect to the following principles:

- (i) the current definition of urban zone be continued.
- (ii) a "commercial zone" be defined to the effect that it means an area consisting of all or part of two or more adjoining urban municipalities but does not include any area of any more than two Regional Municipalities and for the purpose Metropolitan Toronto shall be deemed a Regional Municipality.
- (iii) the exemption from licensing requirements under The Public Commercial Vehicles Act be extended to include a person operating a commercial vehicle on a highway for the transportation for compensation of goods of another person where the transportation of goods is within an (a) urban zone as defined, or (b) a commercial zone, defined as proposed.

2. The Act be further amended to give effect to the principles that:

- (i) (the limits of) all commercial zones will be defined in the regulations,
- (ii) a commercial zone may only be defined in future after a hearing held by the Ontario Highway Transport Board to hear applications respecting a definition of or an extension to a commercial zone,
- (iii) any urban or regional municipality which licences cartage operators or operations may make application to define or extend a commercial zone and be a party to the hearing,
- (iv) the Ministry of Transportation and Communications will be a party to any such hearing and other Ministries of the Ontario Government may be parties.

Where any commercial zone is established, the Ministry of the Treasury, Economics and Intergovernmental Affairs give favourable consideration to a request from a Regional Municipality to amend its Act of Incorporation or other relevant statutes to permit the Regional Municipality to licence cartage operations between its constituent municipalities within the commercial zone where the goods originate and terminate therein.

4. The Ministry of Transportation and Communications continue with Phase 3 of its cartage information study.
5. The Ministry of Transportation and Communications encourage municipalities to study urban freight movements in conjunction with or separate from other transportation studies as the needs of the municipality dictate .
6. Such studies reflect the needs identified by the noted Phase 1, 2 and 3, Cartage Reports for the Ministry.
7. The Ministry of Transportation and Communications set up a share-funding procedure specifically for municipal urban freight studies.
8. The Ministry of Government Services and other appropriate Ministries should consult with the appropriate City of Toronto and Metropolitan Toronto leaders, agencies and officials, including the Metropolitan Toronto Traffic Committee, and the Ministry of Government Services should establish a pilot demonstration project to rationalize the pick up and delivery of goods to and from Ontario Government buildings within the Queen's Park complex.

## PART IV

### CHAPTER 2

#### RATE FILING

The Committee recommends that:

- 1) The rate filing process be continued.
- 2) Section 29(a) of the Regulations be amended to the effect of the following:
  - (i) Section 33 does not apply to a licensee who operates a total of four or less power units, other than a licensee who is the holder of a Class H licence and/or a Class X licence and/or a Class H privilege.
  - (ii) A licensee who is the titled or registered owner of four or less power units shall not be exempt if at any time his fleet is augmented by the lease of one or more power units.
- 2a) A \$50.00 fee for Class X carrier filing a tariff of tolls be prescribed.
- 3) Other existing exemptions to rate filing be continued.
- 4) The 30 day limit on rate changes be continued.
- 5)
  - (i) The Ontario Highway Transport Board be given legal authority to waive the 30 day requirement in cases of rate decreases in conditions of emergency for the public, the shipper and/or the carrier, and that such a waiver be for a maximum period of 45 days and that it not remove the responsibility from the carrier to file that lower rate.
  - (ii) The Board make any such waiver public by posting appropriate notice at its offices or by other effective means.

## PART IV

### Chapter 3

#### THE RATE SETTING PROCESS

The Committee recommends that:

This Province's transportation pricing policies acknowledge the role of trucking rate levels in

- 1) modal choice
- 2) industrial, social and economic growth and development
- 3) the competitiveness of Ontario industry generally
- 4) the Province's current housing, industrial, population and employment policies.



## PART IV

### Chapter 4

#### TARIFF BUREAUX

The Committee recommends that:

1. Regardless of any activity of the Federal Government, certain tariff bureaux activities be retained. These would include, but not necessarily be limited to, the ability to
  - i) provide technical rate-making advice on request to individual members
  - ii) file tariffs of tolls on the instruction of members
  - iii) promote the inter-lining of movements between members and non-members
  - iv) promote the filing of through and joint rates between members and non-members
  - v) promote and conduct rate and traffic research
2. Bureaux should actively promote the discussion of rate-related problems with the shipping public.
3. Carriers filing through a tariff bureau not be permitted to amend an existing tariff through issuance of a supplement changing rates or rules, unless such is actually an addendum to published rates, rules or ancillary services. Regulations provide that when 5 such addenda have been issued to an existing tariff or at any time so required by the Board the tariff must be consolidated and refiled as a new tariff.
4. Filings by tariff bureaux on behalf of stated members who filed a suitable power of attorney with the bureau be recognized in law.
5. The schedule of fees for the filing of tariffs contained in Section 33 of the Regulations pursuant to The Public Commercial Vehicles Act be amended to provide an appropriate schedule of fees when filings are made by a tariff bureau on behalf of its members.

6. Where a bureau files more than one tariff, a fee be assessed against each filing; that it be mandatory that two or more carriers which are not members of the same tariff bureau but which concur in a common rate file with the Board signed concurrences. In such instance as two or more bureau-member carriers file a common rate through the bureau, it shall be the responsibility of the bureau to provide a complete listing of all carriers participating in the common rate.
7. All tariff bureaux which file on behalf of members with the Ontario Highway Transport Board, on request of the Board, make available formal minutes of its Rate Committee meetings. Minutes so filed should be for the sole use of the Board and/or the Ministry of Transportation and Communications and be treated as confidential.
8. The Board be authorized to appoint a member to attend any Rate Committee meeting and the Committee shall facilitate such attendance.
9. Bureaux be prohibited from discouraging independent action proposals of member carriers.

## PART IV

### Chapter 5

#### THE CONCEPT OF RATE CONTROL

The Committee recommends that The Public Commercial Vehicles Act be amended to give effect to the following, subject to other recommendations in this Part:

1. Any rate or tariff of rates filed pursuant to the provisions of section 12 of The Public Commercial Vehicles Act is subject to public review.
2. Any person or organization the majority of whose members would be directly affected by a proposed rate change filed independently by a single carrier may apply to the Board to have the rate proposal reviewed.
3. Any person or organization whose members would be affected by a proposed rate change filed on behalf of any number of carriers by a tariff bureau may apply to have the rate proposal reviewed.
4. An application for a rate review must be submitted in writing to the Board within 15 days of the publication of the notice of the filing by the Board, which must be done within 16 days of the filing of the rate.
5. In addition to publication in the Ontario Gazette, the Board develop a mailing list for subscribing parties to inform them of all filings.
6. Tariff bureaux and carriers take reasonable steps to inform those shippers affected by a filed rate of all rate proposals.
7. The Board may defer a review until it is established that to the Board's satisfaction the proposer and appellant have discussed the proposed rate and that no agreement can be reached.
8. The Board may appoint a person to participate in such discussion and/or bring the parties together for the purpose of discussion as described in 7 above.
9. When a review is allowed, the filed rate(s) under question not become effective until a hearing is held and/or an order given by the Board.

10. A hearing must be held as soon as possible and within 15 days of the expiry of the review application period. A decision must be handed down within 10 days of the hearing. If either time is not honoured, the rate shall be deemed to come into effect, and the Board may not thereafter refuse the rate.
11. A review application must be accompanied by an appropriate filing fee to discourage frivolous actions; costs of the proceedings will be assessed by the Board accordingly.
12. The Board may discontinue a review at any time on its own motion, provided the reasons therefor and any decision which results are made available to the parties and the public.
13. The Board in its decision may only reject or allow the tariff or rate(s) as filed.
14. The Board may encourage the carrier in some cases in conjunction with a shipper to investigate ways and means to lower costs where such action would result in no contest and/or lower rates.
15. There be no appeal from a decision of the Board either approving or rejecting a rate or tariff of rates.
16. At any time the Board discontinues a hearing or approves or rejects a reviewed rate, whether by public hearing or not, the Board make its decisions, with reasons therefore, available to the parties and the public.
17. When the Board rejects a rate or tariff of tolls after a review, the proponent of the rate or tariff may not file any rate increases for 90 days from the filing of the first application for review.
18. The Board be directed by legislation to approve those rates which are in the public interest.
19. The Board be directed subject to the recommendations in Part II, Chapter 3, by the Minister to consider those facts and criteria that government policy suggest, which may include:
  - (a) the long run fixed and variable costs of the carrier.
  - (b) whether the costs quoted and projected by the carrier are justified and reasonable,



- (c) the economic consequence of the rate change, including whether the increased rate is required if the carrier is to remain viable and whether the rate is discriminatory, and
- (d) the historical and projected rates of return of the proponent carrier(s).

20. The Board should through its decisions attempt to ensure:

- (a) that rates reflect longrun costs.
- (b) that costs are justified and reasonable,
- (c) that rate changes reflect a mileage taper where it exists with regard to costs,
- (d) that tariffs and rates are in a comprehensible form and as simplified as possible in their structure, and
- (e) that "through" and "joint" rates are published where required by the public interest.

21. Any rate filed and not reviewed by the Board be deemed to be approved by the Board.

22. This program be phased into operation coincident with the Board acquiring suitable expertise to exercise this proposed mandate consistently within the given time limits.

23. As the program is phased in, the Ministry of Transportation and Communications in conjunction with the Board and industry, consider the role of freight audit service firms.

## PART V

### Chapter 1

#### ENERGY

The Committee recommends that:

1. The Ministry of Transportation and Communications proceed with haste to complete its studies on transportation energy consumption and on empty truck movements and then report its recommendations to the Government.
2. Workshops such as that held by the Advisory Council on Energy be promoted.
3. The Ministry of Transportation and Communications discuss with industry ways and means to promote and achieve freight pooling where advantageous.
4. The Ontario Highway Transport Board reflect through its decisions that pooling or interlining or rationalized pickup and delivery systems would be in the public interest in some cases.
5. The Government eliminate the sales tax on devices which are proven to reduce fuel consumed by commercial motor vehicles.
6. The Ontario Government explore the use of alternate forms of energy for transportation movements.
7. The Ministry of Transportation and Communications continue to examine and report to Government on (i) the various aspects of pup trailer operations, (ii) on the feasibility of extending existing length limits to allow the operation of longer double trailers on certain highways consistent with the laws of adjoining jurisdictions, (iii) whether pup and double trailer operations should be subject to unique licensing of the drivers and the operators.

## PART V

### Chapter 2

#### RECIPROCITY

The Committee recommends that:

1. A branch, division or bureau be established at once within the Ministry of Transportation and Communications to study all aspects of reciprocity and extra-provincial commercial transport.
2. The office be directed to report within six months with a suggested plan for future action.
3. The Ministry of Transportation and Communications notify the Canadian Conference of Motor Transport Administrators and other interested parties of the creation of the new office and invite discussion.
4. Precautions be taken with a view to avoiding congestion on Ontario highways by non-resident carriers of goods, either by provisions for an annual review of volumes and traffic or by insertion of suitable clauses in each reciprocity agreement.
5. The ultimate aim of the Government of Ontario be the efficient and authorized flow of goods in private as well as for-hire vehicles to and from points outside Ontario with a minimum of interference by way of fees, charges, taxes, reports, records and documentation.
6. The Ministry of Transportation and Communications take a leading part amongst the provinces of Canada to promote reciprocity in all its aspects including discussions on the rationalization of differences in operating authority and traffic laws.
7. A joint initiative be taken by the Ministry of Transportation and Communications with the Ministry of Revenue to establish reciprocal arrangements in fuel, gasoline and sales tax with other North American jurisdictions.
8. The Ministry of Transportation and Communications Act and The Highway Traffic Act be amended to the effect that the Minister of Transportation and Communications has the authority to enter into licence plate reciprocity agreements with the governments of other jurisdictions in Canada or the United States.

9. Licence plate reciprocity for Canadian provinces as contained and offered in Regulation 418, Section 10 under The Highway Traffic Act be extended to include all for-hire and private motor carriers.
10. All non-resident carriers, exempt in Ontario from the provisions of The Public Commercial Vehicles Act be required to register in Ontario as recommended in Part 11, Chapter 7.
11. The Public Commercial Vehicles Act, Section 12 (2) be amended as required to the effect that, where a person required to hold an operating licence under this Act is a resident of a jurisdiction with which Ontario has a licence plate reciprocity agreement, the holder of the operating licence need not be the registered owner of the vehicle under The Highway Traffic Act to be entitled to a public commercial vehicle licence.



## PART V

### CHAPTER 3

#### QUEBEC

The Committee recommends that:

1. The Ontario Minister of Transportation and Communications and the Ontario Minister of Revenue press their counterparts in Quebec and other appropriate Ministers of the Province of Quebec for a series of meetings at an early date to discuss the fundamental principles, both economic and political of freeing the movement by highway of goods between the provinces from unnecessary and unequal regulatory and tax laws.
2. That the Minister of Transportation and Communications and the Minister of Revenue include in these discussions considerations of the following factors:
  - (a) registration fees for leased vehicles;
  - (b) the extension of the 1975 reciprocity agreement to apply to all commercial vehicles;
  - (c) equitable arrangements for the collection of gasoline and/or other fuel taxes from non-residents;
  - (d) the imposition of or exemption from sales taxes on private and for-hire vehicles and the pro-rating of such taxes;
  - (e) the operation of Quebec dump trucks on road construction projects in the Regional Municipality of Ottawa-Carleton;
  - (f) confirmation and elaboration of joint hearings and/or reviews and/or appeals by the Transport Boards of the two Provinces;
  - (g) enforcement of relevant laws by means of detention of vehicles and arrest of drivers - inspection stations - interprovince communication;
  - (h) clarification and definition of products of and from a farm or forest which are exempt from regulation;
  - (i) the position of the Ontario Northland Transportation Commission in respect of the operation of its road transport company;

- (j) Workmen's Compensation assessments, qualifications of insurers and the application of or exemption from corporation and income taxes;
  - (k) operating authority of Quebec and Ontario commercial vehicles operating in transit through the other province without pick-up or discharge of shipments therein;
  - (l) special permits for overweight or overdimensional loads;
  - (m) appearance of counsel at sittings of regulatory boards;
  - (n) "piggyback", freight forwarders, lessors, agencies for national carriers of household goods, owner-operators, brokers, tariff of tolls;
  - (o) provision for continuous contact at the Ministerial level for future discussion;
  - (p) provision to the joint Ontario-Quebec officials committee specific policy guidelines for solutions to the problems which now exist in Ontario-Quebec transport.
3. The Ontario Highway Transport Board be complimented for its efforts in promoting joint hearings with the Quebec Transport Commission and encouraged to further the relationships now established with the Commission.
  4. Ontario negotiate with Quebec to derive a reciprocal agreement with regard to the quarterly issuance of commercial motor vehicle and public commercial vehicle licences for vehicles owned by residents of the other jurisdiction .
  5. If an agreement cannot be struck within three months of this report to the effect that both jurisdictions will issue 3 or 6 or 9 or 12 month plates for vehicles owned by residents of the other jurisdiction, then Ontario issue only annual plates, licences and permits to Quebec carriers both private and for-hire in a similar and reciprocal manner as Quebec.

## PART V

### Chapter 4

#### GOVERNMENT - INDUSTRY RELATIONSHIPS

The Committee recommends that:

1. The Ministry of Industry and Tourism and the Ministry of Transportation and Communications continue their Physical Distribution Consulting Program with a view towards increasing the efficiency of the program to the benefit of the small shippers of Ontario.
2. The experiences of these programs be examined by the groups recommended by this Report to study transportation educational needs within Ontario.
3. An Advisory Council to the Minister be established as recommended in Chapter 3, Part II of this Report.

## PART V

### Chapter 5

#### EDUCATION

The Committee recommends that:

1. The Ministry of Colleges and Universities proceed with its program in motor carrier administration developed in conjunction with the Ontario Trucking Association and that during the first year of the program it consider ways and means offering the program at other colleges.
2. The Ministry of Colleges and Universities meet with representatives of Ministry of Transportation and Communications, labour, the transporters and shippers of goods and educators to examine the long run, multi-modal and uni-modal job-oriented courses for which there is a future need.
3. The Ministry of Colleges and Universities meet with representatives of the Ministry of Transportation and Communications, labour, the transporters and shippers of goods and educators to examine the long run, multi-modal and uni-modal planning, law and business courses for which there is a need for university level programs.
4. The group outlined in 3 above consider the establishment of an independent group with provincial funding to promote transportation education in Ontario, through granting fellowships, scholarships and bursaries to students of transportation and to promote transportation research in Ontario by assisting in the establishment of, amongst other things, a research library in Ontario.
5. The Ministry of Colleges and Universities present to the Government the findings of such meetings with recommendations as to the need for and nature of comprehensive education programs at the post secondary level.
6. The Ministry of Colleges and Universities designate truck driving as a recognized trade under The Trade Schools Regulation Act and expand educational opportunities appropriately.
- 7.\* The Ministry of Transportation and Communications, the Ontario Highway Transport Board the Law Society of Upper Canada, in conjunction with the Ministry of Colleges and Universities, other interested governmental and non-governmental groups consider the establishment of a program at the community college level offering a practitioner's diploma which would enable graduates not authorized under The Law Society Act to practice for compensation before the Ontario Highway Transport Board.



8. The Ontario Highway Transport Board report to the Minister of Transportation and Communications on the type and availability of the expertise required to fulfill the tasks proposed by this Committee and that in so doing, the Board be conscious of the present and future need to train its staff.
9. The Ministry of Transportation and Communications develop automated processes to measure the involvement of commercial motor vehicles in motor vehicle collisions such that future programs to promote and require certain standards of commercial driver and commercial vehicle safety can be based on more sophisticated factual knowledge.
10. The Ministry of Transportation and Communications consider ways to inform the public of the number of commercial vehicles inspected under Section 58 of The Highway Traffic Act.

\* Repeated from Part II, Chapter 5 .

PART V

Chapter 6

REGIONAL DEVELOPMENT

The Committee recommends that:

1. The Government further investigate cost of living and cost of doing business differentials between regions of the Province, including the contribution of transportation service, competition and pricing policies to those differentials.
2. The Government further examine ways to equalize the payment of sales tax on transportation services.
3. The Government use the information derived from 1 and 2 above to determine what policies can be applied to lower transportation costs to the benefit of communities distant from major markets.
4. The Government undertake an evaluation of Ontario Northland Transportation Commission's role in the north in time that it may be publicly known when hearings are held with regard to the removal of the North Bay restriction.

## PART VI

### Chapter 1

#### DUMP TRUCKS

The Committee recommends that:

1. The Government announce a moratorium for one year on the issuance of Class R licences.
2. The Ontario Highway Transport Board be permitted to issue licences in emergency situations.
3. The Ontario Highway Transport Board advise the Ministry and be in future in a position to advise the public of the number of dump trailers authorized by outstanding Class R licences as compared to other dump vehicle types.
4. During the moratorium, the Government review within one year the methods that exist and those that could be developed to forecast by region future demand for dump vehicles.
5. After the review contemplated by 4 above, the Ontario Highway Transport Board advise the Government as to the needs for future licences by region and, at the Government's publicly announced direction, lift the moratorium by region as the market demands.
6. The Ministry of Transportation and Communications with appropriate representatives from the private sector, establish a Ministry minimum rate with a base amount per hour and a variable amount per mile which may vary inversely with mileage.
7. The Ministry of Transportation and Communications minimum rates be extended to cover all dump vehicle movements in respect of Ministry construction contracts, including movements which are arranged by a subcontractor, as in the case of a pit operator supplying aggregates to a prime contractor at a price FOB the pit.
8. The Government review the existing practices of all ministries to see what action was taken as a result of the Cabinet directive to include the Ministry of Transportation and Communications minimum rate in all government contracts.
9. The Government require the minimum rates from 6 above for all Ontario Government construction contracts, where such extension has not taken place.

10. The Ministry of Transportation and Communications divulge on a confidential basis, the prices for new trucks it uses to calculate its minimum rates on an annual basis to designated representatives of any incorporated association representing truckers or aggregate suppliers.
11. Section 64a of The Highway Traffic Act be amended by,
  - (i) applying the current section (64a and b) to cases where the total load has been consigned by more than one person, and
  - (ii) by adding a further provision that applies to loads consigned by one person and applies strict liability on the consignor when the vehicle is on the highway and overloaded.
12. The Ministry of Transportation and Communications proceed with haste to derive with industry amendments to Parts VI and VII of The Highway Traffic Act making gross load laws applicable to dump vehicle movements in particular, the law be enforceable and weigh the needs for safety to road users and highway infrastructure against the economic benefits of achieving the highest appropriate load limits.
13. The Ministry of Transportation and Communications promote the dissemination of information about and lend its research abilities to the development of new, more effective and less costly load covering devices for all types of dump vehicles.
14. The Ministry of Transportation and Communications determine and make known to the owners of dump vehicles the feasibility of mandatory inspection of dump trailers.
15. The Ministry of Transportation and Communications augment the dump vehicle program by a requirement to inspect the load containers for defects likely to cause or allow a load or part thereof to become dislodged.



16. Section 68 of The Highway Traffic Act be amended by adding a new subsection to the effect that no person shall operate or permit or cause to be operated upon a highway any commercial motor vehicle or trailer designed in such a way that the load is carried in a container, rather than on a flatbed or float type vehicle, unless the load container is sufficiently well maintained and enclosed that no portion of a load described in "Covering of Loads" regulations may become dislodged through either of the four sides or the bottom of the container while the vehicle is proceeding on the highway.
17. Pit owners be legally responsible for provision of appropriate facilities for tarping at pits and quarries.
18. The Ministry of Natural Resources include the Ministry of Transportation and Communications in future discussions of recommendations flowing from the Mineral Aggregate Working Party's 1977 report.
19. Objective criteria be considered by the Board to simplify Class R applications and consistent with the Committee's comments in Chapter 3 - III regarding fleet size, the Board encourage new sources of supply rather than allowing an undue concentration of vehicles within a few firms.

## PART VI

### Chapter 2

#### UNLICENSED FOR-HIRE TRUCKING

The Committee recommends that The Public Commercial Vehicles Act be amended to provide:

1. An offence for any person who knowingly engages a for-hire truck transportation service which is not properly licensed or registered as required by The Public Commercial Vehicles Act or Motor Vehicle Transport Act or who knowingly conspires or assists in the contravention of any other provision of the two Acts.
2. An improved definition of for-hire carriage to include a "buy and sell" transportation service or to exclude it from a definition of private carriage.
3. The Committee's recommendation in Chapter 3, Part II be adopted regarding trip leases of vehicles and drivers between two licensed carriers.
4. All concerns which are in the business of leasing commercial motor vehicles shall register with the Ontario Highway Transport Board.
5. The applicant for registration as a lessor provide to the Board all information required to be filed which will include evidence as to,
  - (i) name, address and telephone number of the company,
  - (ii) directors of the company,
  - (iii) standard form of contract and may include
  - (iv) further details of the operation as to whether he is doing business or proposes to do business only with licencees under The Public Commercial Vehicles Act and The Motor Vehicle Transport Act; whether the lessee has the right to purchase the leased equipment; whether the lessee will display on the vehicle the name of the lessor; the method and frequency of compensation for the use of the vehicle; whether the lessor exercises control over the selection or discharge of the drivers and if so, the extent thereof and how they are paid; whether sales tax is paid or to be paid or exempt; whether lessor or lessee is responsible for the maintenance, fuel, insurance, registration under The Highway Traffic Act of Ontario and payment of statutory penalties.

The registrant shall undertake to refrain from holding himself out to conduct the business of transporting.

6. All driver pools shall register with the Ontario Highway Transport Board.
7. The applicant for registration as a driver pool shall provide to the Board all information required to be filed which will include evidence as to,
  - (i) name, address and telephone number of the company;
  - (ii) the directors of the company;
  - (iii) standard form of contract between the driver pool and its drivers and/or the method of payment;
  - (iv) names of the owners of the commercial vehicles utilizing the driver pools shall be supplied monthly;
  - (v) the names of the drivers, their addresses and the number and classification of their driving licences under The Highway Traffic Act.
  - (vi) the trips taken by the drivers, showing the origin and destination, date of departure and return and, where known, a description of the goods carried.
8. A registered driver pool shall insure that payments to the Workmen's Compensation Board are made in respect to all its drivers.
9. Driver pools shall file with the Ontario Highway Transport Board a monthly statement on activities in the preceeding period as to the information outlined in 7.
10. There shall be attached to each report a declaration signed by the owner or operator of the driver pool to the effect that,
  - (i) he has no interest, directly or indirectly in the vehicles which are to be driven by the drivers of the driver pool,
  - (ii) he is not engaged in the business of transportation, and
  - (iii) to the best of his knowledge, information and belief, the activities of the drivers are not related to violations of The Public Commercial Vehicle Act and the regulations thereunder.

11. All registered driver pools and lessors be subject to audit by Board inspectors (See also recommendations in Chapter 7, Part II).
12. All registered driver pools and lessors be subject to Section 7 of The Public Commercial Vehicles Act.
13. The information which will be required to be filed by registrants should be established in regulations under The Public Commercial Vehicles Act.
14. Registrants as lessors or driver pools shall undertake to:
  - (i) limit advertising and other information published as a result of this registration, to a statement of the registration number. The registrant shall not state or infer that approval has been given by or on behalf of any Board or Ministry of the Government of Ontario;
  - (ii) notify the Ontario Highway Transport Board of any material changes in the particulars furnished on the application for registration. Such notice shall be given within 15 days following the effective date of any change of particulars;
  - (iii) observe the provisions of Section 15(c) of The Public Commercial Vehicles Act on the same terms and conditions as if the registrant held an operating licence under the said Act;
  - (iv) withdraw the registration if and when the applicant ceases to do business in Ontario;
  - (v) state the names and addresses of other parties having an interest in the ownership, management or profit of the business, by way of joint ownership, partnership or stock or other interest in a corporation.
15. Each vehicle leased by a registrant shall carry with it a copy of the lease and the lessor's registration permit at all times that such vehicle is operated under the lease.
16. Unlicensed for-hire carriers should apply for certificates to the Ontario Highway Transport Board within a prescribed period of time.
17. Applications under 16 above should name the shippers being served, the commodities being carried, the points of origin and destination, the number of vehicles now being used, and the length of time that the applicant has performed these services.



- 17.(1) (a) Applications will not be considered from anyone commencing business after October 1, 1976.
    - (b) Records in support of applications must show that service has been continuous for a period of not less than two years prior to October 1, 1976.
  - (2) The applicant should also supply evidence of financial ability to carry on the business; of vehicles meeting prescribed safety standards and of the rates to be charged.
  - (3) The applicant shall supply records of employment and the relationship with dependent contractors to the Ontario Highway Transport Board and these records shall be considered prior to a decision being made.
  - (4) Applicants shall show that arrangements have been made for Workmen's Compensation payments in respect of all non-office employees.
  - (5) Opposition to such applications may only be based on the accuracy and validity of the information required by the application or by the Board.
18. The Public Commercial Vehicles Act be amended to make illegal the lease of a large commercial motor vehicle unless the lease or arrangement provides for the return of the commercial motor vehicle to the place of receipt of the vehicle by the lessee.
- The above amendment coincide with the giving of all decisions by the Ontario Highway Transport Board in all hearings arising from recommendations 16 and 17 above.
- The amendment not inhibit vehicle trip leasing as recommended in Part III, Chapter 3 of this Report.
19. Contracts for the leasing of commercial motor vehicles shall be filed with the Board by the lessor.

## PART VI

### Chapter 3

#### EXEMPT MOVEMENTS AND EXEMPT TRANSPORTATION SERVICES

The Committee recommends that:

1. The Public Commercial Vehicles Act be amended to include the definition of a tow truck to the effect that a tow truck is a non-articulated commercial motor vehicle over 5,000 pounds registered gross weight designed by the manufacturer or re-designed, converted or reconstructed and used exclusively to a elevate or hoist or lift and tow another vehicle by means of device which may be a winch or hoisting mechanism or a crane or tow dolly, permanently attached to the tow truck.
  - (a) The Act should be amended to the effect that no person shall operate a tow truck on a highway for compensation unless the operation is registered with the Ontario Highway Transport Board.
  - (b) All applicants for registration shall provide information required to the Ontario Highway Transport Board which shall include evidence as to;
    - (i) the name, address and telephone number of the operator,
    - (ii) the principals of the company, and
    - (iii) the nature and geographic limits of its operations.
2. Outstanding applications by tow truck operators before the Ontario Highway Transport Board be disposed of by the Board.
3. The Ministry of Transportation and Communications develop a program of annual tow truck safety inspections and prescribe suitable equipment standards.
4. The Ministry of Transportation and Communications consider specifications for a form detailing charges to be filled out by the tow truck operator and signed by the owner or operator of the vehicle being towed, and explore with the Ministry of Consumer and Commercial Relations further action with regard to consumer protection.

5. The Ministry of Transportation and Communications with the Ministry of Colleges and Universities develop a course for tow truck operators at the community college level.
6. The Ministry of Transportation and Communications explore with the Ministry of the Treasury, Economics and Intergovernmental Affairs provisions for municipalities to regulate tow truck operations particularly upper-tier municipalities.
7. The Public Commercial Vehicles Act be amended so that tow truck operations are clearly excluded from the requirements to hold a Public Commercial Vehicle Operating Licence provided that such operations are duly registered.
8. Section 2(2) of The Public Commercial Vehicles Act remain unchanged otherwise.
9. The Ministry of Transportation and Communications and the Ontario Highway Transport Board resolve the different approaches to the transport of wood chips, shavings and sawdust, as these commodities are not exempt by virtue of Section 2(2) and related law should be enforced.
10. The Ontario Highway Transport Board, if specifically requested, review licences authorizing the movement of wheat to determine if shortfalls of capacity are likely in peak demand periods.
11. For-hire transportation of freight in automobiles be regulated on the same basis as freight carried in station-wagons and trucks.
12. Continuity of automobile operations existing at the cut-off date of publication of this Report be assured by the grant of "grandfather" Public Commercial Vehicle privileges strictly limited to the nature and scope of operations at the cut-off date.
13. "Grandfather" applications be granted by the Ontario Highway Transport Board upon proof of and only to the extent of operations prior to the cut-off date. Any person who intends to initiate or expand or alter such a service thereafter must apply to the Ontario Highway Transport Board for authority in respect of the new or expanded or altered service, and the application will be heard through the normal hearing process by the Ontario Highway Transport Board and subject to the test of public necessity and convenience.

14. The definition section of The Public Commercial Vehicles Act be amended to allow the regulation of automobiles which is to be required by amendments to implement the principle contained in 11 above.
15. All automobiles (cars) operated under a Public Commercial Vehicle Licence be plated under The Public Commercial Vehicles Act.
16. All automobiles (cars) operated under a Public Commercial Vehicle Licence carry the company name on both of the front doors of the vehicle.
17. A broker of transportation services be defined in The Public Commercial Vehicles Act.
18. A transportation broker not be entitled to own any commercial motor vehicles or have any interest in commercial motor vehicles and not lease vehicles.
19. A transportation broker be permitted to arrange transportation for the consignor of goods only if the goods are carried on vehicles by operators authorized to do so under The Public Commercial Vehicles Act.
20. All transportation brokers except those otherwise licensed under The Public Commercial Vehicles Act be registered with the Board.
21. It be an offence to broker transportation services or lease vehicles or supply drivers without being registered.
22. Applicants for registration as brokers provide to the Ontario Highway Transport Board all required information which will include;
  - i) name, address and telephone number of the company;
  - ii) the principals of the company and information at registration and quarterly thereafter as to;
    - a. the truckers engaged,
    - b. the method of payment to truckers and responsibility for maintenance, fuel, fines and Workmen's Compensation, and
    - c. the names of those who consign goods through the Broker.
23. All brokers pay their licensed carriers at a minimum, every two weeks or bimonthly.
24. All persons who perform a brokering service but who are licensed as a for - hire carrier not register as brokers and be exempt from recommendations 18 - 23 above.



25. Any person licensed as a for-hire carrier and who utilizes an owner-driver to perform transportation services under the former's Public Commercial Vehicle authority or exemption shall,
  - (i) execute a contract with the owner-driver, the form of which shall be prescribed in the regulations,
  - (ii) shall file the contract with the Ontario Highway Transport Board,
  - (iii) shall notify the Board within a prescribed time period when the contract is no longer in effect.
26. The contract in 25 above shall set out,
  - (i) that Workmen's Compensation Board payments are made in respect of the owner-driver,
  - (ii) that payment will be on some basis other than a percentage of revenue, and what the method is,
  - (iii) an agreement of not less than 30 days,
  - (iv) terms and conditions as to which party is responsible for maintenance, fuel, insurance and payment of fines for transportation related convictions.
27. Any person on contract with a licensed carrier as defined by 24 - 26 above shall carry in the vehicle copies of;
  - (i) the registration permit,
  - (ii) the operating authority,
  - (iii) the contract in the prescribed form.
28. Section 12(2) of The Public Commercial Vehicles Act be amended to the effect that to be eligible for a vehicle licence, the operator must either hold title to the vehicle or the vehicle must be on contract to the licensee in the above recommendations or be validly leased.
29. The appropriate act be amended so that the existence of such a contract will permit charges in The Highway Traffic Act against the licensed carrier as if he were the registered owner.

30. The Government consider general bonding provisions for users of for-hire transportation services, particularly those in the construction business, to provide for the payment of subtrades.
31. Payments be made to the Workmen's Compensation Board in respect of all owner-drivers or owner-operators.
32. All registrants as tow truck operators and transportation service brokers shall undertake to;
  - (i) limit advertising and other information published as a result of this registration, to a statement of the registration number. The registrant shall not state or infer that approval has been given by or on behalf of any Board or Ministry of the Government of Ontario;
  - (ii) notify the Ontario Highway Transport Board of any material changes in the particulars furnished on the application for registration. Such notice shall be given within 15 days following the effective date of any change of particulars;
  - (iii) observe the provisions of Section 15(c) of The Public Commercial Vehicles Act on the same terms and conditions as if the registrant held an operating licence under the said Act;
  - (iv) withdraw the registration if and when the applicant ceases to do business in Ontario;
  - (v) state the names and addresses of other parties having an interest in the ownership, management or profit of the business, by way of joint ownership, partnership or stock or other interest in a corporation.
33. All information required to be filed by registrants be prescribed in regulations under The Public Commercial Vehicles Act.
34. All registrants be subject to the provisions of Section 7 of the Public Commercial Vehicles Act.

## PART VI

### Chapter 4

#### LOAD AND VEHICLE CONTROLS

The Committee recommends that:

1. The Ministry of Transportation and Communications with the Ministry of the Solicitor-General consider allowing private escort vehicles which meet prescribed standards to provide escort vehicles on long, wide and heavy vehicular or load movements in lieu of requiring Ontario Provincial Police escorts consistent with the principles of the overdimensional farm vehicle regulations.
2. Regulations be developed to prescribe appropriate standards for escort vehicles.
3. The Ministry of Transportation and Communications continue to press the Federal Government for appropriate legislation respecting the movement by highway of dangerous commodities.
4. The Ministry of Transportation and Communications proceed with its development of securing of load regulations for goods which present particular difficulties or hazards in loading and/or transport, with a view to making the regulations flexible, consistent with the objective of making transport regulation uniform across Canada.
5. The enforcement and administration of federal livestock regulations be included as a matter for federal-provincial discussion within the Canadian Conference of Motor Transport Administrators and involve both transport and agricultural administrators.
6. Uniformity between jurisdictions of commercial vehicle laws, load laws and equipment laws be regarded as a desirable objective wherever practical by the Ministry of Transportation and Communications. This will be particularly applicable in any future redrafting of Parts V, VI, VII and VIII of The Highway Traffic Act dealing with equipment, gross weights, axle weights and speed respectively.
7. The Ministry make every effort to simplify axle weight laws in respect of all commercial vehicles.

## PART VI

### Chapter 5

#### OPERATIONAL ITEMS

The Committee recommends that:

1. The transfer or sale of dormant licences be prohibited.
2. Dormancy be construed as meaning a refusal or inability to operate in accordance with the expressed terms and conditions of the licence.
3. Dormancy not exist as long as the licensee holds himself out to the public to provide the transportation service authorized by the operating licence at rates which are reasonable.
4. If a respondent to a transfer seeks to make dormancy an issue in the proceeding, he shall notify the Board in writing and a special hearing on the dormancy may be called by the Ontario Highway Transport Board which would precede the transfer application or the Board may allow dormancy to be an issue in the transfer proceedings.
5. A 5% tax be levied on the gross sale price including goodwill of any trucking business which is operated under a Public Commercial Vehicle Licence.
6. Regulation 700, Section 7 or The Act as necessary should be amended to require the filing of financial statements and details as to the selling price of any licenced for-hire trucking firm in a transfer proceeding.
7. The Public Commercial Vehicles Act be amended to require a licensee to notify and give reasons to the Ontario Highway Transport Board within a prescribed time period when any condition in Section 10 of The Act is encountered or any time that a service specifically authorized in the operating licence has not resulted in any business for the carrier for a period of six months and an offence be prescribed against a carrier who does not so notify the Ontario Highway Transport Board.
8. Section 5(3) of The Public Commercial Vehicles Act be amended to provide that a licensee may not discontinue or discriminate against any service authorized by the operating licence without giving notice to and being given approval by the Ontario Highway Transport Board.
9. The Ontario Highway Transport Board may hold a public hearing to consider any alleged dormancy and may hold a public hearing in cases contemplated by Sections 5(3) and 10 of The Public Commercial Vehicles Act or by recommendations 7 and 8 above. In such a hearing, the Board may exercise all the authority contained in Section 17 of its Act as recommended in Part II, Chapter 7.



10. Financial statements be filed with the Ontario Highway Transport Board by all licensed carriers and registrants at year end, in any rate review hearing and in any hearing on dormancy when requested by the Ontario Highway Transport Board.
11. Over time, statements from carriers should be in similar terms and in accordance with a prescribed standard of accounting which should be developed with the cooperation of licensees.
12. The requirement for a statement duly certified by a chartered accountant may be waived for smaller carriers at the discretion of the regulatory tribunal. In suitable cases it may be sufficient to accept copies of income tax returns, bank summaries or similar equivalents.
13. Annual filings be required initially. Two or three years later, filings for alternate periods be considered by the Board.
14. The statements will be confidential for the exclusive use of the Ministry of Transportation and Communications and the Ontario Highway Transport Board.
15. Where the carrier is associated with or a subsidiary of another company, consolidated as well as individual statements be filed.
16. Under exceptional circumstances and for good reasons, exemptions from filing statements may be granted by the regulatory tribunal for temporary periods. Such discretion may be exercised for entire groups or classes of carriers or in specific cases where the statement is obviously non-productive, for instance when a large manufacturer operates a single licensed unit for backhaul purposes in international operations.
17. Each licensee when filing its annual financial report with the Ontario Highway Transport Board append thereto a declaration stating:
  - (i) the number of C.O.D. shipments on hand,

- (ii) the amount of C.O.D. money in its possession, and
  - (iii) the number of days that the C.O.D. money has been in the possession of the licensee.
18. The Public Commercial Vehicles Act be amended to give effect to the following principles:
- (i) Accounts shall be submitted for payment within ten days of the date of delivery of the shipment,
  - (ii) Payment of freight charges shall be made within fifteen days of receipt of accounts.
19. Demurrage charges be filed with the Ontario Highway Transport Board as part of any normal tariff filing and such charges be subject to review in the same manner as charges for transportation (See Part IV, Chapter 5)
20. When demurrage charges filed are agreed to by particular consignor(s), carrier(s) and consignee(s) and the agreement is filed with the Board, they not be subject to review at the time of filing.
21. The Ministry of Transportation and Communications through the CCMTA and other appropriate forums press for a uniform Canadian bill of lading.
22. The Public Commercial Vehicles Act and/or regulations thereunder be amended by the addition to the exemptions from bills of lading holders of operating licences of any class which permits in law or explicitly by a term of the licence, the carriage of small packages, when and only when such small packages are being transported.
23. The Ministry of Transportation and Communications meet with truckers and shippers to develop a definition of small packages for the purpose of 22 above, which should be prescribed in regulations.
24. When a carrier is exempt from bills of lading by virtue of 22 and 23 above, the licensee shall ensure that each package carried bears a label showing the names of consignor and consignee, the origin and destination of the shipment and the number of packages in each shipment, and the licensee should be required to keep a record at his terminals for two years from the shipment date showing the same information as

on the label described, the gross weight of each shipment, its declared value, if any, the amount of payment of freight charges and the method of payment together with the signature acknowledging delivery.

25. Each Class H licence or Class A carrier authorized to carry used household furniture on completion of the delivery furnish to the consignee an addressed form on which the licensee shall set out the details of the move and the consignee may state therein the degree of satisfaction or dissatisfaction with the performance of the carrier and the reasons for this opinion. The form shall be addressed to the Secretary of the Ontario Highway Transport Board at Toronto and shall be signed by the deliverer at the point and time of delivery.
26. The telephone number of the Ontario Highway Transport Board's "Hot Line" should be placed on the form in 25 above for the information and use of the consignee. The purpose of the Hot Line as described in Part II, Chapter 5, be described on the form.
27. The Public Commercial Vehicles Act be amended to require that any person transporting used household goods provide an estimate of the costs of a movement to the consignor of any goods carried under its authority prior to the movement of the goods.
28. The Ministry of Transportation and Communications in conjunction with Class H carriers develop an appropriate schedule with a view towards establishing the maximum limits by which actual charges by Class H carriers may exceed the estimate of the cost given to the consignor.
29. The amount of cargo insurance specified in Section 21 of Regulation 700 be increased to an amount justified by current claims experience. These amounts should be reviewed on a periodic basis.
30. The increase of liability of the carrier for cargo to all perils and the \$1.50/lb. liability be priority subjects for consideration of the Advisory Council to the Minister of Transportation and Communications as recommended in Part II, Chapter 3.
31. Failure on the part of the Advisory Council to conclude these matters within one year of the date of this report shall be cause for revising the form of cargo insurance to give complete protection to the shipping public.

32. The Warehousemen's Lien Act be amended to enable a carrier who is unable to effect the delivery of a shipment and after proper notice to both shipper and consignor, to deliver to a public warehouse. The warehouseman may then pay the carrier the transportation charges and obtain a lien therefor against the shipment.
33. The Ontario Government decide and publicly state whether it intends to regulate the movement of commercial motor vehicles from traffic volume and highway safety considerations on weekends, holidays or at other specific times.



## CONCLUSION

If the Committee could suggest only one action which would reflect its impressions of Ontario's goods moving industries it would be something to indicate diversity, complexity and the need for future policy making to view transportation comprehensively, in all its facets.

With that in mind, the Committee further recommends, as its conclusion to this subject for the time being, that:

The Public Commercial Vehicles Act be replaced by an act entitled and cited as "The Ontario Transportation Act" to indicate more properly the concepts, policies, terms and conditions with which it deals. This change would focus the true purpose of The Act and encourage the Government and the public to regard transportation in the comprehensive fashion that is necessary.



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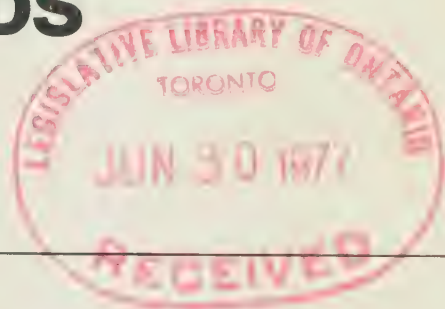


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ONTARIO

# **A PUBLIC POLICY DIRECTION FOR THE HIGHWAY TRANSPORTATION OF GOODS**



## **Part VIII Appendices**

**Final Report of The  
Select Committee of the  
Legislature on Highway  
Transportation of Goods**

**Bud Gregory M.P.P. Chairman  
1977**





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## **Volume II**

**Final Report  
of  
The Select Committee  
on  
The Highway Transportation of Goods**



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(CONTAINED IN A SEPARATE VOLUME)

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APPENDIX DEUROPEAN REPORTD.1 Introduction

During the early part of the Committee's hearings, a considerable amount of testimony was given on the effects of "economic deregulation" in other jurisdictions. The most notable and often referenced experiences were those in Australia, Great Britain and Belgium. Significant information was tabled with the Committee relating to The Motor Carrier Reform Act in the United States.

It has been stated in many articles that these nations, amongst others (the U.S. not included) have deregulated their trucking industries from an economic point of view, moving instead to higher emphasis on what are often referred to as systems of quality control. The thesis of many authors is that economic deregulation has worked in the jurisdictions which have attempted it.

The thesis continues to postulate that because it has worked in England, Belgium etc., economic deregulation would work in Ontario, that it would not cause great upheaval in the long run, and that many salutary effects would occur for the shippers and truckers of this Province.

The nature of the evidence, in combination with the severe criticisms of the Ontario regulatory system from many other points of view, led the Committee into its widely publicized consideration of the regulation vs. deregulation argument. All economic theory seemed

to say that deregulation would work. Truckers and others supported regulation vehemently. One way of coming to grips with the fundamental truth of both sides of the argument was to test the oft-cited hypothesis regarding foreign experiences. Because deregulation has worked in other places, would it work in Ontario? It was this question more than any other which moved the Committee to designate a group of 6 members to travel to Europe to examine some of the foreign experiences first hand. (Readers should recall that the Committee also went to Washington D.C. to discuss the question with the U.S. Department of Transportation and the Interstate Commerce Commission)

The Committee's sub-group travelled to England where it met with:

The Road Haulage Association  
 The Freight Transport Association  
 Dr. Chris Foster  
 Ryder Truck Leasing (Mr. Glenn Schneider)  
 Department of the Environment  
 General Transport Worker's Union

The sub-group met in Brussels with:

Belgium's Department of Communications  
 Union of Industries of the European Communities  
 The International Road Union  
 The Commission of the European Communities  
 Representatives of the Leasing Industry  
 Belgian National Federation of Long Distance Haulers  
 Association of International Professional Haulers

The group also travelled to Germany and met with:

The Ministry of Transport  
 The Federal Association of Freight Forwarding & Warehousing  
 The Federal Institution for Long Distance Hauling  
 The Federal Association of German Long Distance Hauling  
 The O.T.V., Union for Public Service, Transport and Traffic Workers

Why were these three countries chosen? Great Britain and Belgium were each countries which had, it was reported to us, "economically deregulated" their trucking industries. On the other hand, it was reported that West Germany had retained economic regulation. Comments before the Committee indicated that West Germany's for-hire trucking industry was lagging behind those in deregulated countries, ostensibly because of economic regulatory controls.

The Committee was also given to believe by testimony in the summer of 1976 that reciprocity in all its aspects had been achieved in western Europe. It was appropriate to discuss this matter with the Commission of the European Communities (EEC) to see what if any lessons could be learned by and for Ontario.

Purely as background, are the following points of history with respect to the regulatory law in the jurisdictions visited.

#### GREAT BRITAIN

The system of licensing in Britain until 1968 had three categories: Class A for the professional carriers with some contract provisions; Class B for private or "own-account" plus limited public or "for-hire" privileges and Class C for own-account. The "B" licences could carry in a limited way some for-hire goods. Both Class A and B licences were issued according to the public interest.

In 1968 after several years of debate, The Transport Act was passed by Parliament. This Act was intended to substitute quality licensing for quantity licensing. By virtue of this Act, vehicles with a gross weight of less than 3.5 tons require no licence.

A vehicle larger than 3.5 tons requires an "O" licence both for-hire and for own-account; this part of The Act was made effective in 1960. Regional licensing authorities process applications for and issue "O" licences. This process includes the publication of applications in a brochure "Applications and Decisions". Specified trade unions, the haulage association and the local police may object to the applications.

Road transport had been growing and through 1961 to 1972 grew to approximately 86% of the total tonnage being carried in Great Britain. Since the 1968 Act, the professional hauliers seem to be growing in terms of tonnage carried at a greater rate than private carriage.

#### BELGIUM

During the 1930's the Belgian railways were suffering economically. In March 1936 a law was passed which required for-hire truckers to be licensed. This system continued until 1960 when the law was liberalized. By that time the railroad had lost a considerable amount of its domestic



traffic. The system implemented in 1960 required the new applicant to apply for a local licence and basically continues today. This local licence is all that an applicant is entitled to for a period of three years. If, having run an operation for that period of time so that a profit of 40,000 Belgian francs per ton of capacity was grossed per year, the person may then apply for a national licence. Once a national licence is obtained, and it is held for two years and the operator continues to show a profit of 40,000 Belgian francs per ton of capacity the size of the vehicles which he is entitled to operate may be increased. Six years after having received the national licence, the operator may apply for an unlimited number of licences, as long as the revenue requirement of 40,000 Belgian francs per ton capacity is being maintained. An international licence is required to operate outside the national boundaries.

There are several classes of capacity licences:

- a) equal to or less than two tons
- b) equal to or less than ten tons
- c) equal to or less than fifteen tons
- d) more than fifteen tons but less than nineteen tons on two axles
- e) less than twenty-one tons on a semi-trailer
- f) less than twenty-eight tons with two axles
- g) larger combinations
- h) tractors.

Moore pointed out in his book that own-account trucking held a substantial share of the domestic market while the professional hauliers retained more of the international traffic. Moore commented that small firms were shrinking.

#### WEST GERMANY

Rate controls were brought into German industry in 1931 and capacity control was introduced in 1935. The main objective was the protection of the German railroads, which had lost much traffic to truckers through those years. This objective continues as the reason for the regulatory system which exists in Germany today.

This Act and the current system provides for four basic types of licences in professional haulage. They are, long distance transport, regional transport (150 kilometer radius), furniture removal, and international operations.

Recent amendments have made the licences of each of these categories transferable from one vehicle to another.

Moore reported in his book that entry into the regional or short distance category was reasonably easy.

There are limits and quotas set on entry into the long distance segment of the industry and these quotas are set by ministerial decree. Entry into this segment of the industry is far more difficult.

Long distance transport on own-account requires permits for vehicles which are more than four tons or for tractors which are more than fifty-five horse power.

Rates are controlled by the BAG.

Before 1972 the German government had a discriminatory tax on own-account transportation. This was done away with in 1972 as it violated the principles of the EEC.

Moore reported in his book that generally speaking service levels were very high and the profit rate in Germany was not particularly high.

Following in Parts D.2, D.3, D.4, D.5, are more detailed discussions of the Committee's impressions of the experiences in Great Britain, Belgium, West Germany and the EEC respectively.

Attached with the EEC discussion is an extract from one EEC publication outlining the legal and regulatory situation in the various members states of the EEC and at the Community level. Particular facts are referenced in the text of the Final Report, significantly in Chapter III - 2, Control of Entry and Chapter II - 4, Private Carriage. Various documents received by the Committee in Europe have been turned over to the Legislative Library for future reference.

The Committee was, in a general way, struck by several significant facts of the European experience. These facts tend to weaken the arguments of those who favour deregulation and particularly those who advocate it based on the experiences of other jurisdictions, European jurisdictions most particularly.

First and foremost are the vast geographic, socio-economic and historical differences of these jurisdictions when compared one with another or with Ontario. The regulatory systems examined by the Committee are national ones, not provincial. Each country is motivated by a desire (some much stronger than others) to protect the national rail system. In all of Great Britain, Belgium and West Germany the rail system is heavily subsidized by the national government. A single level of government controls all modes of transportation and virtually all transportation infrastructure. In theory, this gives that single level of government the ability to shape an overall transportation policy which may be designed to protect one mode against another or, alternatively to allow each mode to fight it out with the others.

The Committee was concerned about "deregulating" Ontario, given that all its neighbours (Quebec, Manitoba and the United States) control their trucking industries. Deregulation in Ontario would not only place Ontario's for-hire trucking industry at a disadvantage compared with non-Ontario firms, but it would be inconsistent with continued regulation of the other modes of goods transport in Canada, at the federal level. Alberta, an economically deregulated province in Canada, has controlled extra-provincial transport to protect the Alberta based for-hire industry.

In Europe, there continues to exist economic regulation on international transport. Nothing moves except under the authorization of national quotas. Quotas are straight capacity control and a very pure



form of economic regulation. The quotas on for-hire trucking movements are either negotiated bilaterally or, are established by the EEC in a totally separate Community program. What has been "deregulated" is national transport in Great Britain and Belgium.

Each jurisdiction visited has different priorities and needs for its economy and social structure. These differences manifest themselves in part in very different attitudes to the transportation sector. As discussed, the position of rail is one consideration. Others include the necessity to promote new industry, the type of industry in the economy, the geographic barriers to be overcome, and the location of population. A country with no frontiers has different transportation needs than one which does. An economy which exports large volumes of semi-finished or raw product has differing transportation needs from one which primarily exports finished goods. Such differences determine to a large extent that transport policy will differ between such jurisdictions, in such a significant way that comparisons between them are extremely difficult.

Another fact which struck the Committee is the general lack of data on the trucking industries. Great Britain for example, based its support for its current system on the Geddes Report, and on the Bayliss study. These were undertaken some years ago and are too out of date to use in analyses of the British experience today. The British Government is just now undertaking new studies to help quantify

the effects of its regulatory system today. Ontario similarly needs ongoing programs to measure the effectiveness of its systems.

As will be clear from the text of the Final Report, the use of the word "deregulation" to describe the Belgian and British experiences is misleading. In the context of the regulation vs. deregulation argument, it is generally assumed that it is economic regulation which is under discussion. Economic regulation may include entry controls, and/or operational controls being applied to the for-hire trucking industries. On this basis, the Committee did not visit a jurisdiction which was totally deregulated. Already discussed were the presence of quotas on international road transport in western Europe. In addition, one must consider economic operational controls through the market place, which can be severe in the presence of powerful unions and shipper groups.

One must also consider the nature of quality controls which are applied to the trucking industries. It is generally held that in the absence (or lessening) of economic controls, a jurisdiction must impose quality control on potential trucking operations. This is advised by virtually all those who favour economic deregulation, and thus, one finds various forms of quality control in Britain and Belgium. Prospective operators may be required to pass tests or examinations or to demonstrate that suitable maintenance facilities exist to service the operator's fleet.

In the British system for example, entry to the industry is not strictly free, nor is the carrier's ability to expand his fleet. An Ontario licensed carrier generally has more freedom to expand than a British operator. Consider for example, the following comments taken from the Application Form for an Operator's Licence and from a Guide to O Licensing published by the British Department of the Environment:

In due course, you may wish to expand your fleet, or at least put an extra vehicle on the road from time to time, for one reason or another. To do this, you would normally have to apply to vary your licence under the full procedure of the Act (see the "Guide"), but the Licensing Authority may, when granting you a licence, authorise a number of additional vehicles over and above those you actually have in possession, or on hire, at the time of application. If your application for these additional vehicles is granted, all you need to do is simply notify the Licensing Authority within a month of the date when you first acquire them and pay the appropriate fee. However small your fleet may be you would be well advised to ask for authority for at least one additional vehicle in order to cover you against emergencies (eg., breakdowns of vehicles, sudden increases in business). To help the Licensing Authority in deciding whether He ought to authorise such additional vehicles, this question asks you to estimate how many extra vehicles you expect to acquire (this includes acquisition both by ownership and by hiring). Be realistic in your estimate. Do not ask for extra vehicles unless you are reasonably sure you will need them (trends in your business over the last few years might be a useful guide here). Remember that the Licensing Authority will have to be satisfied that you will be able to maintain all your vehicles in a fit serviceable condition. If in any doubt, see the "Guide".

An "operating centre" means the place at which your vehicles are based and from which they normally operate. The Road Traffic Act 1974 enables Licensing Authorities when deciding whether to grant a licence, to take into account whether or not your operating centre is suitable for the purpose.

If any application you make for the grant of an Operator's Licence or for a variation of that licence is subject to the full procedure laid down in the Act, it will be published by the Licensing Authority in a booklet called "Applications and Decisions" which is available from Licensing Authority, price 12 1/2p. If your application is published, it is open to objections, from any of the following bodies:

- (i) A Chief Officer of Police
- (ii) A Local Authority
- (iii) The Freight Transport Association
- (iv) The Road Haulage Association
- (v) The General and Municipal Workers' Union
- (vi) The National Union of Railwaymen
- (vii) The Scottish Commercial Motormen's Union
- (viii) The Transport and General Workers' Union
- (ix) The Union of Shop, Distributive, and Allied Workers
- (x) The United Road Transport Union.

You will be sent a copy of any objection at the same time as it is sent to the Licensing Authority.

If the Licensing Authority so decides he may grant you a licence authorising fewer vehicles than you have applied for. He may well do this if, for example, he is not satisfied that you will be able to maintain the total number of vehicles you applied for. This power also applies to any application for additional vehicles.

Unless your licence authorises a number of vehicles over and above any you actually had in possession or on hire when you first applied ( see above ) you will have to apply formally for a variation of your licence on form GV 81. Except in certain cases, where the Licensing Authority considers the variation to be trivial, he will publish your application for a variation. This means it will be open to objections ( see above ), and will be treated generally in the same way as a new application for a licence. If your application is refused you have a right to appeal. An objector also has a right to appeal.

The Licensing Authority has wide powers to "revoke, suspend, prematurely terminate, or curtail" your licence if there has been a material change in the circumstances which were relevant to the grant of your licence, or if it comes to his notice that any of the statements of fact you made in your application were false, or if there has been any prohibition of the use of your vehicles during the last 5 years or if you have been convicted of any of a number of offences during the last five years.<sup>1</sup>

1. Guide to Operator's Licencing. Department of the Environment of Great Britain, 1975, Queen's Printer.



In Belgium, entry is more or less free to the short distance market but a carrier who wishes to move to a national licence needs to show certain levels of profitability. To transport internationally, examinations must be taken.

The EEC has proposed a far reaching program to require examinations for all those wishing to transport internationally within the Community. The knowledge required by the transport manager will be substantial.

Thus one can see an overall system in Europe where initial entry to the industry is quite simple, both in countries which are regulated and those that are "deregulated". Entry is easy so long as fleet sizes are manageable, and so long as one restricts himself to short distance transport, often in areas no larger than Ontario's urban areas where entry is also free. As one tries to grow either in terms of fleet size, or to transport over longer ranges, controls become more and more stringent. For all countries, the controls culminate in quotas applied to the carriers of virtually all countries engaged in international transport.

Each country is clinging to its own system because of its special interests. On the broad front, reciprocity has not been achieved any more in Europe than it has in North America.

It is interesting to note in Belgium, where entry is said to be free, that the percentages of empty movements are far higher than they appear to be in Ontario. Over 33% of medium size firms in national transport return empty. Almost 66% of the small regional operators

return empty. About 33% make international returns empty. Large Belgian firms (more than 20 vehicles) return empty on national runs 66% of the time and on international runs about 50% of the returns are empty.

Compared to Ontario's available evidence (say 25% of inter-city miles) the Belgian figures are atrocious. While the effects of such a high percentage of empty movements have not been quantified the costs to the public will be severe.

Contrary to the general belief, economic regulation, if applied intelligently, can result in a rationalization of supply and demand for trucking movements which could decrease empty miles far below what would logically occur in a free entry open market. This clearly must be a priority for governments and the transportation industries in the years to come. Lack of operational controls in a time of energy shortage is not justifiable.

SUMMARY OF EUROPEAN TRANSPORTATION  
REGULATORY SYSTEMS

D.2 Great Britain

There have been several evaluations of the British experience since the introduction of the current Transport Act in 1968. One of the most widely publicized works has been "Trucking Regulations - Lessons From Europe" by Thomas Gayle Moore which deals with the effects of deregulation in Britain and four other Western European countries. Moore concludes that "deregulation" had no adverse effects on the industry in Great Britain.

A report done for the Department of the Environment by Dr. Brian P. Bayliss, entitled "The Road Haulage Industry since 1968" was published in 1973. In his study, Dr. Bayliss attempted to establish the structure of the road haulage industry since 1968 with respect to such characteristics as fleet size and the growth of own-account hauling, particularly own-account operators who commenced hauling for-hire. He also examined entry and exit to the industry since 1968 and made a particular effort to define the reasons for the surrender of operators' licences through the years 1968 to 1973.

Dr. Bayliss also reported on trends with respect to the size of firms and types of work in professional haulage. He examined at some length the operating costs in professional road haulage and concluded that:

1. No evidence of any extensive use of vehicles under 3 1/2 tons gross weight by professional operators to avoid the quality controls of operators' licensing.
2. The increase in tonnage carried for others by own-account operators amounted to less than 2% of the total tonnage carried for others in 1971.
3. There was no evidence of large numbers of new entrants into professional road haulage.
4. There was no evidence of substantial numbers of professional operators going out of business.
5. There was no suggestion that established professional hauliers are increasing the size of their existing fleets out of relation to increase in demand.
6. Profit margins in 1971 were substantially the same as those in 1965.
7. The costs and charges rose at the same rate and kept in line with national price increases between 1965 and 1971.
8. Finally, there appeared to have been little change in investment resulting from established operators' fears about the future. <sup>1</sup>

On this last point, he concluded that "It might be considered that although the investment figures reflect no great optimism; at the same time, the small overall changes also reflect no substantial worries about the future under operators' licensing. <sup>2</sup>

The Department of the Environment referred frequently to the Bayliss Study as its evaluation of the effects of the 1968 law. In discussing the Bayliss Study, however, they allowed that as it had



certain shortcomings, the Department would conduct a further study to update its information.

It would be inappropriate to evaluate the British experience without drawing some quotations from the annual reports of the licensing authorities to the Secretary of State for the Environment 1974-1975.

There are eleven traffic areas in Britain. These areas are organized geographically and each has a licensing authority responsible for operators' licensing and for holding public inquiries with respect to particular operators. They are also responsible for heavy goods drivers' licensing and enforcement of particular provisions of the highway traffic code.

In the report of the Northern Traffic Area, Mr. John A. T. Hanlon reported:

The constant and considerable entry of newcomers into road haulage almost balanced as it is by lapsed or surrendered licences shows a continued and disturbing instability in what should be a highly professional industry.<sup>3</sup>

To support this statement, Mr. Hanlon stated that 807 new applications were received during the reporting period as compared with 1,117 in the previous year...of these, a total of 709 licences were issued while some 696 licences lapsed or were surrendered due to bankruptcy or other financial failure.

The reports of all the traffic regions noted a similar statistic, although some varied. In each case the number of new licences granted in 1974 - 75 was considerably less (generally around 20%) than had been issued in the previous year. Furthermore, in all regions many of the licences which were due for renewal in the year 1974 - 75 were not renewed.

There is a substantial fluctuation with respect to people entering and leaving the industry.

Statistics for 1975 indicate that 30,530 licences were issued, with only 539 applications being refused. The granting of these 30,000 licences led to a total of 143,127 operators licensed in all of Great Britain. This figure is overstated because operators must hold separate operator's licences in each traffic area. Consequently, the figure of 143,000 operators is greater than the total number of licensed operators. This licensing of operators included licensing for 104,417 tractive units and 458,872 rigid units, a total of 563,289 vehicles.

A review of the licensing statistics from each of the regions indicates that approximately 10,000 licences were not taken up or renewed, or they were surrendered during the previous year. Despite the comments of certain licensing authorities, these figures are difficult to interpret because own-account operators are licensed as well. It is difficult to draw absolute conclusions about instability in the for-hire segment of the industry, although it appears to be subject to rather significant exit volumes.

Perhaps the most interesting development since 1968 has been the relative growth of for-hire trucking as compared to private carriage. Department of the Environment figures indicate that the total tons carried by for-hire carriers had increased from 45.9% or 772 million tons in 1967 to 54.1% or 831 million tons in 1974. Over the same period private carriage decreased from 54.1% or 909 million tons to 45.9% or

or 706 million tons. In 1973 public haulage accounted for 64% of ton mileage and own-account for about 36%. Generally, public carriers operate heavier vehicles over longer distances.

These figures show a reversal of the trend in Britain prior to the 1968 law and evident today in Ontario as well as other countries such as the United States, Belgium and West Germany where private transport seems to be growing at the expense of for-hire carriage.

The number of small vehicles from 1.5 to 5 tons unladen weight decreased in the years 1963 - 1973 some 30%. All other vehicle categories increased over the same period. That the relative importance of own-account is decreasing appears consistent with the general belief that own-account tends to use smaller vehicles.

While there is no significant evidence to refute the proposition that the 1968 law has been effective, one must examine the total context of "deregulation". The industry is now regulated from a quality point of view. For example, candidates for a lorry driver's licence are subject to driving and medical tests for which there is a high rate of failure.

Vehicles are subject to annual tests at the Department of the Environment's 67 permanent and 24 part-time heavy goods vehicle testing stations. In 1973 - 1974, some 917,000 tests were carried out. Of the 730,000 vehicles and trailers examined, 552,000 or 76% were passed.

Obviously, vehicle fitness requirements effect a prospective operator's costs, which at the least make entry to the industry more difficult financially. It may also decrease the propensity for an operator to cut prices in the short run, although to the extent that regular maintenance costs become fixed costs, this effect may be less significant.

The industry is controlled in many respects. Some of the quality provisions have been outlined. Despite the general lack of quantity controls, applications must specify the number of vehicles to be operated. In 1974, 3,493 applications were restricted either by the requirement for a public inquiry or by restrictions on number of vehicles or on duration of the licence. This represents a refusal to licence over 9,000 vehicles. One must also consider that applicants must prove that suitable premises exist to maintain the vehicles adequately. Additionally, the "O" licensing system is to be complemented by European Economic Community requirements for those wishing to become road hauliers. They will have to be reputable, professionally competent and possess adequate financial resources. These provisions, if implemented, would make entry to the industry more difficult.

Operation controls are brought to bear on trucking operations in several ways. For example, drivers' hours are also tightly controlled as indicated in the following quotation from "Freight Transport", British Industry Today (March, 1975)



The limits on goods vehicle drivers' hours are 10 hours daily time at the wheel, maximum daily duty of 11 hours, maximum daily spread-over of duty 12 1/2 hours, maximum weekly duty 60 hours, maximum speed of duty on driving before a half-hour break 5 1/2 hours, minimum daily rest period 11 hours, and one weekly rest day. Most drivers of goods vehicles of over 1.5 tons unladen weight must keep log-books to record driving and working time. European Community rules, limiting driving in general to 8 hours a day and 48 hours in any seven consecutive days, applied in Britain from April 1973 to drivers of goods vehicles over 3.5 tons gross weight on international journeys. Journeys entirely within Great Britain are due to become subject to these rules on 1 January 1976. To aid the enforcement of these rules, European Community legislation requires commercial vehicles to be fitted with a tachograph, an instrument which automatically records the driver's hours and the vehicle's speed and distance covered.

A further source of operational controls is organized labour. Discussions with the General Transport Workers' Union revealed a very high level of control on the industry by the unions. The General Transport Workers do not see the European Economic Community regulations becoming effective as scheduled and if and when they do, they will apply very likely to international transport only.

Although the General Transport Workers Union has the ability to object to applications, it seldom does. It would like broader grounds on which to object. The union opposed the 1968 Act and its membership has increased since then. Own-account trucking operations have become more organized than for-hire carriage, although unionization within the commercial transport sector is increasing. While there remain some non-union operators, the unions are so strong that they control the docks on virtually all domestic traffic. The effective union influence on who moves goods, where and how they move is extremely broad.

In addition, legislation has been proposed which would create a five mile "cargo handling zone" around the coast of England. In that

zone, a variety of jobs connected with cargo would be the exclusive province of registered dockers. The Bill would give the Secretary of State for Employment the power to designate any other area as a cargo handling zone. The Road Haulage Association has stated that "there are manifest dangers for hauliers in this bill...it excludes from the dock labour scheme driving on public roads any vehicle whose normal use is mainly on such roads whether within or outside the zone. By implication, registered dockers will have to take over hauliers vehicles on private roads within a port." <sup>4</sup>

Over a recent wage dispute, the same Association commented:

The fact that workers may need protection against unions and their officials has been ignored by Government in its obsession with discriminatory legislation giving employees and their representatives unprecedented rights and heaping unparalleled financial and administrative burdens on employers. <sup>5</sup>

Clearly too, the Freight Transport Association exerts considerable influence on the market place. It is the Committee's view that producers and shippers outweigh for-hire carriers in rate, mode and traffic negotiations. For example, the Freight Transport Association members operate some 400,000 vehicles. Those vehicles can be operated to provide the own-account carrier with a for-hire backhaul. One must set that against the relative size of public carriers. In 1974 there were about 130,000 operators in the industry, including own-account. The average size of a fleet is only about four vehicles. Nevertheless, in recent years there has been a tendency for larger firms to develop in the private sector.

Given that rates are freely negotiated with no government control, shippers hold the strong hand in rate negotiations. The Freight Transport Association speaks of the cooperation between industry and the transport sector which has developed since the 1968 Act. It is

"important that trade and industry choose wisely, and with reasonable regard to the interest of the public generally for the protection of the environment. To fail to do so will inevitably give rise to statutory control." <sup>6</sup>

The Road Haulage Association comments on the Restrictive Trade Practice Acts through which:

Legislative pressure is being brought to bear on hauliers. As a result of a new Order in March, the negotiations of rates collectively by hauliers with customers and the establishment of mutually agreed schedules or conditions of operations is no longer a matter of common consent. The Restrictive Practices Court is now the arbiter of their acceptability in the public interest. <sup>7</sup>

The Freight Transport Association feels that:

The price (of transport) is now more closely allied to costs... of utmost importance is the contribution each has made towards a close analysis of the total requirements in distribution and this has led to the development of total distribution services over a wide field of trading activity...the freight forwarder who provides a total distribution service makes a substantial contribution...(if the transport market in the U.K. is) viewed as a whole it is difficult to discern a pattern that satisfies the transport theorist or economist who sees transport as an end in itself...the organization of the transport market has never been so well oriented in the traders' favour; we must retain this advantage... <sup>8</sup>

Some excerpts from the annual report of the Road Haulage Association put the Freight Transport Association's comments in context:

That the past year has been difficult for members of the Bulk Liquids (carriers) is a gross understatement. Because of the economic climate many members have had to lay up vehicles...

Great difficulty in obtaining viable rates has been experienced throughout the year and few, if any, increases have been reported. The lack of any substantial movement of caravans has resulted in a buyers' market and there are many "cowboys" offering their services at rates which no reputable haulier could match...

Serious economic difficulties particularly affecting Chrysler, Leyland and Vauxhall car production caused great anxiety for car transporter companies...

The year will be remembered for rapidly rising costs as a result of inflation and a reduction in the number of heavy goods vehicles operated by members because of the economic situation. There seems little prospect of an improvement in trade in the immediate future...

An increase in the number of demands for proof of delivery has been a cause of concern to many members of the group, particularly as some customers are withholding payment of accounts until these documents are produced for every consignment...

International road haulage as it has increased may attract less attention from the public at large but its importance is acknowledged by trade and industry. A number of hauliers who eagerly accepted traffic for the Middle East without proper investigation and without adequate facilities met many setbacks and have withdrawn from this market. Those who have built up reliable and regular services have now been faced with further troubles as a result of the action by the Turkish Government in imposing heavy taxes on commercial goods vehicles in transit through that country...

The past year has been unspectacular for the Livestock Carriers' Functional Group but the enormous increases in costs, particularly of vehicles and equipment, have caused difficulties. The level of haulage rates continues to cause great concern to the group committee...

The past year has been depressing for the meat haulier although the quantity of other frozen products carried has been up to standard...

Members are disturbed at reports that a growing number of local (waste disposal) authorities, either through inexperience or deliberately, are hiring out (waste haulers) at rates so low that they almost certainly show a loss, which is presumably being borne by the long-suffering ratepayers...



Road transport to European countries has suffered like domestic haulage from the general recession in trade and there has been the almost inevitable tendency not to charge genuine economic prices...The reduction in traffic has been coupled with increases in the numbers of permits available for France and the Federal Republic of Germany, and in the case of France in particular, this has allowed more companies to receive permits... With other countries the size of quotas of permits has caused difficulties...

Hopes of an even modest increase in the size of the European Economic Community quota were dashed when the Council of Transport Ministers in December, 1975, decided that none should be applied because of the general economic situation...

At the same meeting of Ministers it was agreed that Regulation 1174/68 governing compulsory bracket tariffs for international road haulage of goods should be continued until the end of 1976 for the six original member states of the Community. Meantime, the European Economic Community Commission has produced a draft regulation providing for the introduction of reference tariffs in place of compulsory bracket tariffs. The proposals envisage tariffs for international transport drawn up bilaterally by the representatives of the hauliers in consultation with users and trade unions and these will form the basis for charges actually agreed between the provider and the user of transport. The statutory compulsion of the present tariff system will be removed but the Commission has in mind the possibility of action being taken when charges fall below an economically viable level...

The Commission appears to be seeking to introduce greater freedom in charging but with some reserve powers to prevent "ruinous competition"...British international hauliers will no doubt welcome any protection against the extreme cutting of rates which has been apparent recently although still seeking commercial freedom in fixing prices.<sup>9</sup>

In conclusion on the British experience, the Committee feels that there remains in one form or another, certain controls in the industry. One must look to driver standards, vehicle standards, operational centre standards, the ability of the local authority to restrict the number of vehicles licensed and the possible implementation of the

European Economic Community directive on admission to the road haulage industry. One must also consider the power of the unions to control the movement of goods in an operational context and what the Committee interpreted as the powerful position of the Freight Transport Association.

Internationally, one must look to the presence of quotas in bilateral agreements and a quota on European Economic Community licences. These restrict the movement of goods in terms of how much moves and who moves it.

One cannot quantify the effects of the 1968 law. On balance, all parties seem pleased with the present system. Some favourable developments in the transportation market can be seen as results of the change, others should be attributed to economic conditions and improvements in technology which do not find the regulatory change as their basis.

The relative regrowth of public haulage is a significant and healthy development. The causes may include:

1. General economic conditions in Britain.
2. The high rate of licensees leaving the system.
3. Ability of own-account to carry third party load for-hire.
4. Power of shippers in direct negotiations with carrier.
5. Greater flexibility of public carriers.
6. Need for carriers to negotiate service.
7. Improvements in vehicle design and capabilities.

While improvements to the regulatory system are advocated, there is a general contentment with the situation. Real rates have remained reasonably stable. Service is obviously good. One must set these facts against the comments of the Road Haulage Association and licensing authorities quoted above.

FOOTNOTES

1. Dr. B. T. Bayliss The Road Haulage Industry since 1968.
2. Ibid.
3. Annual Reports of the Licensing Authorities to the Secretary of State for the Environment 1974-1975; Covering the period 1st October 1974 to 30th September 1975.
4. Road Haulage Association - 31st Report for 12 months to March 31st 1974.
5. Ibid.
6. FTA Ltd, Organization of the Transport Market by R. V. Frost; 1976.
7. OpCit, RHA Annual Report.
8. OpCit, FTA.
9. OpCit, RHA Annual Report - selected, non-sequential quotes.



D.3 Belgium

It seems almost impossible to separate the experiences of Belgium from those of the European Economic Community. Transport policy in Belgium is dictated by a number of factors, but one must look specifically to its size and geographical location within Western Europe. International and transit traffic are particularly significant to the Belgian economy and therefore to the government.

Figures from the Belgian Ministry of Communications indicate that 80% of total rail transport, (on a ton/kilometer basis), 65% of inland waterway transport and 35% of road traffic is either international or through transport. This fact, combined with considerations of geography, industrial and port location means that the government attaches special importance to the workings and achievements of international organizations, particularly the Benelux and the European Economic Community.

One must also consider that the Belgian railway SNCB is state owned and subsidized for both its passenger and freight traffic losses. In the past as well, railways received government capital grants for infrastructure.

In the 1930's, Belgian rail was in financial difficulty which led to the introduction in 1937 of a licensing scheme for for-hire road transport. Road transport was subjected to a quota, with authorizations granted based on the needs of the market. For reasons which included the difficulties of determining the real needs of the marketplace and the

development of own-account trucking, the system was "liberalized" in 1960.

Deficits now running approximately 40 billion Belgian francs per year or 70% of the total expenditures of the railways continue to be paid to the SNCB. Rail freight rates, continue to be very low; however, road freight's share of the market is nearly double that of the railways. Inland waterway and rail each account for some 26% of the market, with road transport accounting for 46-48% of the total. Government policy has tended to allow the railways more freedoms and many routes have been abandoned; the number of workers is only half of what it was at the end of the last World War. The principle of railway protection through road transport controls appears not to have worked and, partly as a result road transport controls were relaxed.

Generally, truck rates in Belgium are free for the market place to determine. Exceptions include the transport of products of the European Steel and Coal Organization and the transport of products within the countries Benelux both of which are subject to obligatory maximum/minimum tariffs. International traffic within the original 6 countries of the European Economic Community is subject to the bracket tariffs.

No data was provided on which to base the effects of the 1960 law on rate structures for domestic traffic. To the extent that SNCB rates are relatively low given heavy government subsidies and, given that road transport has continued its growth in comparison to rail, one can conclude that prices of

road transport have remained competitive where there is a competitive supply market.

With respect to firm size, a study was published by L'Institut du Transport Routier entitled the Structure du Secteur du Transport Professionel Routier de Marchandises en Belgique. While the study was conducted by questionnaire which received only a 38.9% response rate, its conclusions deserve some comment. In January 1976, the number of enterprises with road transport authorization was 10,623. This included 7,576 with class "V" authorization for national transport and 3,047 with a class "P" authorization for transport within a 25 kilometer radius. Approximately 95% of the class "P" operations were classed by the study as small or medium size and having less than 20 units.

Fifty-five per cent of all Belgian trucking enterprises possess only one vehicle. Many of these are family businesses. Investment is low; many deal with only one shipper. Regional transport is most important with most charged trips being 50 kilometers or less. Almost two-thirds of the operators make national returns empty. About one-third make international returns empty.

Characteristics of medium size firms (5-19 vehicles) are somewhat different. The most typical firm is a family enterprise; however, different from the small firms, less than one quarter are involved in activities other than professional haulage. Investment is healthy with debt/equity ratios at reasonable levels. This group is perhaps the most dynamic. Articulated vehicles are in common use, although the single shipper is still common.

National transport is more important for this group than regional; general merchandise is more often hauled, although over 40% are specialized by particular types of merchandise. National distances are in the range 50-100 kilometers. More than one-third of those vehicles in national transport make empty return trips.

The larger fleet owners of more than 20 vehicles show different characteristics again. These firms tend to employ more administrative personnel and just over one half are involved in other commercial activities, most of which are transport related. Their financial situation is healthier than for the other two groups.

The tendency of the larger operators is to more than one shipper and over half are principally involved in international transport.

About 50% are specialized in one mode of transport; about 25% are specialized by merchandise. National runs average 150 km and international runs average 200 to 400 km. Regular traffic is more common than with the other two classes. However, over two-thirds of return national runs are empty; about one half of international runs are empty. These firms also direct more resources to marketing and publicity than do the others.

The study concluded that while there were advantages to the small operator, there were also significant disadvantages. The report speculated that one disadvantage was the absence of economies of scale (however the study by itself was not sufficient to conclude firmly that economies of scale do exist).

More recent indicators of the for-hire industry's performance suggest that it may be as healthy in Belgium as it is anywhere else:



Considering both national and international transport increased the tonnage carried from 248,036 (1000 tons) in 1968 to 341,535 in 1973 (If 1968 = 100, 1973 = 137.3).

In terms of ton kilometers, the increase was more substantial from 10,563,740 (1000 tkm) in 1968 to 15,961,387 in 1973 (1968 = 100, 1973 = 151.2).

In a group surveyed in 1975, 40% reported an increase in capacity utilization, 20% reported no change.

Railroad movements doubled from 1971 to 1973 after which both the number of movements and tonnage decreased.

Own-account vehicles in use increased approximately 8.38% from 193,405 in 1972 to 210,084 in 1975. Corresponding figures for for-hire vehicles were from 25,860 to 28,900 an 11.32% increase.

In terms of tonnage carried, own-account increased from 695,742 (1000 tons) in 1972 to 784,305 in 1975, or 12.24%, although the rate of increase was decreasing steadily - 5.23% in 1973, 4.56% in 1974 and 2.45% in 1975. Comparative figures for for-hire transport were 319,625 (1000 tons) in 1972 to 414,332 in 1975 an increase of 27.12%. The increase was more stable than own-account, 8.09% in 1973, 10.27% in 1974 and 8.76% in 1975.

Investment in trucks increased in 1972-1973 but decreased in 1973-1974. The downward trend continued at an increased rate in 1974-1975. The same was true of investment in road tractors.

CECA movements were increasing in price, 1973 to 1975 from 100.0 in 1973 (index) to 106.4 in 1975, but fluctuations are shown quarter to quarter. (30% bracket)

Tariffs for bilateral movements among European Economic Community countries rose from an index of 100 in 1973 to 112.05 in 1975.

In summary, the industry appears to be reasonably stable. Fluctuations in investment are attributed by the Government to recent economic conditions rather than to any inherent instability in the for-hire market. However, private transportation grew after 1960 and own-account continues to contribute more than eight times the number of vehicles and almost twice the number of tons carried by for-hire. The rate of increase for both private and for-hire decreased markedly in 1974 and 1975, with cutbacks in own-account expansion greater than those within the for-hire industry. The contribution of own-account to road transport, however, remains significant.

The for-hire industry, while not subject to tests of public necessity, remains controlled to a great degree. One cannot easily enter the long distance transport business. One reason is economic (to the extent that scale economies exist), the other is government regulation. Government regulations control entry by limiting the new entrant to short distance operations within 25 kilometers. He is restricted to this limited operation for three years, at which time, he may apply for a national licence. In both situations, the operator will be limited in terms of the number and the capacity of vehicles which he may operate. Only after nine years is an operator totally free in these respects. It is likely too, that by that time, his interest will include international traffic which is restricted by the number of quota authorizations given him by the government.

Thomas Gayle Moore pointed out in his book that by 1971, 993 operators would have qualified for a national licence. However,

only 213 national licences were granted. This appears consistent with the results of the study noted earlier, which showed that particular characteristics could be attributed to each of the small medium and large for-hire firms. To the extent that there exists a positive relationship between size and national and international operations, or ability to operate them, there is more involved with moving from a "P" to a "V" licence category than straight objective regulatory criteria. Thus, the system may inhibit growth from short distance to national and international operations. To the extent that moves from "P" to "V" or medium to large scale operations are less frequent than one might expect in a "deregulated" environment, the hypothesis has some validity. It appears that, to the extent that Belgian firms can grow under the current system, the more profitable they will become.

With respect to "V" licence holders:

5,605 were small (74%)

1,526 were medium (20.1%)

445 were large (5.9%).

With respect to "P" licence holders:

2,952 were small (96.9%)

93 were medium (3.0%)

2 were large (0.1%).

The system may encourage smallness, whether this is beneficial, given the importance of international traffic to Belgium, is the important question.



The percentages of empty return loads do not compare favourably with what is known about the situation in Ontario. Empty movements are far, far higher than proponents of "deregulation" would have one believe.

D.4

WEST GERMANY

There is no argument about the degree of control of government over German trucking - it is very tight. Stringent controls are applied to long distance trucking. However, entry into the industry for short distance haulage is comparatively easy.

The historical reason for government involvement stems from the social and political desire to protect the German Railway. This remains the prime motivation. However, the government is broadening its approach at this time to view the transportation system as a whole and its efforts will be directed to optimizing the use of various modes where they are more efficient. Whether this will lessen quantity control on the for-hire trucking industry remains to be seen. Increasingly, the government is forced to recognize the benefits of for-hire trucking, and it is private trucking which is viewed by the government as the "new inefficiency" in the transportation system.

As goods transported by rail fluctuated from 333.4 million tons in 1961 to 346.0 million tons in 1968, transport by long distance for-hire trucking operations increased steadily over those same years from 103.8 million tons to 152.4 million tons.

In 1975, the railways forwarded 301.7 million tons of goods (41.8% of the total), waterways 227.3 million tons (31.6%) and professional long distance transport 112.2 million tons or 15.6% of the total and long distance transport on own-account was 79.2 or 11.0% of the total. Ton/kilometer

percentages are not significantly different - rail 37.8%, waterways 31.8%, professional long distance transport 21.3% and own-account long distance 9.1%.

In 1975, there were 9,148 undertakings with "concessions" (licences) for long distance transport. The capacity provided is 30,917 vehicles of which 18,215 in long distance, 6,942 in regional long distance, 1,102 in international and 4,658 furniture transporters. The carrying capacity of these vehicles is reported to be 574,000 tons.

Despite the efforts of the government to build and improve roadway infrastructure, some are of the opinion that congestion will worsen and that the present infrastructure, if not radically improved, will break down.

The Ministry of Transport conducted a study into infrastructure costs and recently published a report on the findings. The study recommended active pursuit of construction of particular infrastructure, rail, road and water to 1985. It proposed a program within the framework of existing transport policy objectives involving expenditures of 120.1 billion DM to 1985. To make available sufficient funds, one of the recommendations is:

a reduction of the equalization payments to the German Federal Railways by short and medium term concentration of the supply of services, the transfer of personnel to more productive areas or the reduction of the share of personnel costs through nationalization. On the basis of the results of the first phase of federal transportation mode planning, alternate ideas will be developed as to conceivable transportation situations up to the year 1990...regulatory policy and investment policy will be intertwined more closely with each other in long range planning.

In considering the past and future development of German transportation policy, one must keep in mind several factors which make the derivation of objectives more difficult, - the heterogeneity of the provinces, the geographic position of Germany as a transit country for international transport, the loss of natural hinterland for German ports since the war, the urbanization of the nation and the role of the railways.

Trucking has expanded its volumes more than has rail. Private trucking has increased more than for-hire. National transport accounts for much more freight movement for German carriers than does international. These trends are noteworthy.

There are 9,148 long distance licences in Germany. The maximum is set by Ministerial decree and has not been altered for nearly five years. Of the total, 2,066 or 23% are engaged solely in long distance transport and 7,082 or 77% are engaged in for-hire trucking in connection with another business, such as the building materials industry, coal industry or motor-car leasing. These for-hire undertakings operate 30,917 vehicles.

Interms of private carriages there are 28,841 registered long distance own-account undertakings which operate 72,601 vehicles.

Of for-hire operations:

- 3,204 or 35.0% have one licence
- 2,145 or 23.4% have two licences
- 1,213 or 13.4% have three licences
- 1,551 or 17.0% have four to six licences
- 1,035 or 11.3% have seven or more licences.

The government is aiming to reduce the share of private

transport in total business traffic from 64% in 1970 to 50% in 1985.

Commercial truckers travel an average trip of 287 kilometers, own-account, approximately 187 kilometers. Average load weights are 22 tons and 8 - 10 tons respectively.

In 1955, international haulage represented approximately 60% of the total for German for-hire haulers; in 1965 that figure dropped to around 37%; by 1975, it had dropped to 31%. This is critical importance to the German haulers. It is downplayed by some including the OTV (Union for Public Service Transport Workers) who feel that the industry, given the continuing growth in national transport volume and presumably in revenues, remains very healthy.

One of the possible explanations for the decrease in international traffic is the high level of taxation on German for-hire carriers.

The tightest control is over long distance road transport. Short distance road transport is much freer because rail is not a viable alternative. It is improper to lump short and long distance operations in considering the effects of tight regulatory German controls. Long distance should be the prime area of concentration.

Thomas Gayle Moore in his book *On the European experience* commented on the significant differences in rates between Germany and other countries. Some attribute this to the presence of capacity controls; others, including the Germans, view this as a result of higher costs, contributed to in no small way by considerably higher levels of taxation.



#### D.5 The European Economic Community - Analysis and Summary

The Commission is trying desperately to make its presence felt and has made several proposals in this area. However, little real progress has been made because the Member States cling to their own system. Each state, despite its commitment to the Treaty of Rome, has its own interests, its own problems, its own social, economic and political goals. In addition, each state is at its own stage of industrial and economic development, with varying reliance on national and international goods movement.

One is reminded of the North American and Canadian situation with regard to different weight laws, taxation and registration requirements.

The European Economic Community must be committed to harmonization of regulatory law as its major goal, rather than to any particular solutions. While the Commission staff have an interest in promoting certain specific methods of regulatory proposals, the commitment to many of the proposals is such that the proposal would be amended (indeed compromised) if it meant that by so doing, it would be acceptable.

The Commission states:

The common transport policy has not made striking progress in recent years. The practice of adopting at intervals partial and limited measures extracted from the Commission's proposals slows its development. The Community needs, on the contrary, to work out an overall approach enabling it to respond, in the medium and long terms, to the requirements of a society and an economy which are in the midst of profound change.

The guiding principle behind the concept of the common transport policy, as it was developed by the Commission in its 1961 memorandum, was that transport undertakings and users should benefit from the advantages of competition. The measures proposed since then, which have only been adopted in part, are aimed at this objective.

The Commission recognized the differences of interest and of opinion which exist in transport matters. It believes that a dialogue between Community institutions, first of all within the Council and then through exchanges of views with the European Parliament and the Economic and Social Committee, could help to resolve these difficulties.

In addition, the Commission regards these dialogues and exchanges of views as a useful means of obtaining the necessary information for deciding on the contents and order of priority of the measures to be taken. The Commission will present to the Council proposals for common rules within the context of the long-term objectives and guidelines and the programme for action in the short term set out in this Communication. <sup>1</sup>

Community transport accounts for about 6% of Gross National Product. In the nine member states, energy consumption by transport is estimated at 16% of total energy consumption, with road transport accounting for 13%. Traffic between member states has increased significantly and the factors behind the expansion of transport sector will remain influential during the years to come.

On regional development the Commission states:

The role of transport as a factor affecting regional development has been reinforced by the accelerated expansion of industrial growth areas and by the widening of the range of potential industrial areas, though these zones do not necessarily coincide with the less developed regions. <sup>2</sup>

On the needs for economic union, the Commission states:

To the extent to which the intervention of the public authorities in transport is confined to the national or bilateral level, there is a risk of increasing the "compartmentalization" of national transport policies, a compartmentalization which is still with us despite fifteen years of efforts to implement a common transport policy.

Intervention by the public authorities in transport is clearly necessary. However, the divergences between the various interventions of the authorities at national level and the related rigidity of national transport arrangements led the authors of the European Economic Community Treaty in 1957 to provide for a common transport policy for the common market. But the objectives which the council laid down between 1965 and 1967 by a series of key decisions have only been achieved to a very partial extent.

With a view to achieving some liberalization of the transport market, the common transport policy envisaged a harmonization of competitive conditions (particularly social and fiscal conditions) within each mode of inland transport and between modes. But although a number of proposals have been made, not enough harmonization has so far been achieved even to lead several Member States to accept a certain degree of market liberalization in road transport, the mode of transport where liberalization seemed the most urgently required.

It is enough to recall the situation which exists in international road transport between Member States. Depending on the journey in question, transport for hire or reward is either free, or subject to authorization, or subject to permits granted within a quota system. The nature of the authorizations varies from one type of journey to another (period of validity, freedom to pick up a return load, etc.). The basis for international transit within the Community varies from state to state. Own-account transport is sometimes free, sometimes subject to quotas. The arrangements for combined transport are inadequately developed and are not harmonized as between Member States. It is important to emphasize that by virtue of Article 75 of the Treaty, common rules applying to international transport, and the conditions under which non-resident transport undertakings may be allowed to engage in national transport activities within a Member State, should have been drawn up during the transitional period.

The efforts which have been made to eliminate impediments to trade and to create a common transport market have not fully succeeded, and the common transport policy is in an impasse.<sup>3</sup>

On the existing policy of European Economic Community, the

Commission states:

Pursuit of the general objectives of the Treaty within the framework of a common transport policy, as envisaged in Articles 3 (e) and 74 of the Treaty of Rome requires the progressive introduction of coherent Community transport arrangements capable of meeting the requirements of economic union and of society at the least cost to the community. On the effectiveness of these arrangements will depend in large measure the optimum utilization of factors of production and development in the interests of improving living and working conditions.

The purposes of the Treaty for the transport sector have not yet been achieved, Community action must, therefore, as in the past, continue to remove remaining impediments to the free circulation of transport services and harmonize the framework within which the activities of the different transport modes and undertakings are exercised. It must also provide instruments enabling the play of market forces to be corrected where required (e.g. tariffs and capacity control).

The common transport policy must, indeed, constitute a factor for social progress, making, on the one hand, the best possible response from the Community's standpoint to transport needs and, on the other, a contribution to improving the living and working conditions of those employed in the sector.

Public investment in transport infrastructure is an essential basis for the development of structural policies, particularly regional policy and planning. A common transport policy, covering the field of infrastructure investment, should contribute not only to developing the less favoured regions but also to reducing congestion in overcrowded areas.

Working conditions as well as the make-up of vehicle crews constitute an important factor affecting the competitive conditions which determine the costs of transport undertakings. Their harmonization in the cause of social progress, for the three forms of inland transport, is thus an essential contribution to the proper functioning of the common transport market. Some harmonization of working conditions should also be envisaged for air and sea transport and for ports.

Within the framework of the Commission's proposals for a common system of charging for infrastructure, specific taxes should to the extent that they need to be retained, become instruments of that "tariffication". In so far as these taxes fall on commercial vehicles or their fuel, their structure and level should be determined exclusively as a function of factors related to infrastructure costing.

An efficient and economic community transport system will increase competition and encourage specialization in all sectors of industry.

The existence of such a system, leading to a better knowledge of present and future demands for transport equipment, will make a marked contribution to the efforts which are in hand towards a restructuring of European industry, and will allow industry to derive the maximum benefit from an extended market. The transport sector is an important buyer of goods and services. It is in its interests that industry, in supplying the various means of transport, should be in a position to furnish equipment giving the best service at the lowest cost.

At another level, transport undertakings need to have at their disposal as soon as possible the main instruments of industrial policy in order to benefit, in the same way as other enterprises from conditions enabling them to adapt to the scale of the European market and to the advantages of an integrated economic area. This will mean, in particular, creating forecasting methods designed to adjust capacity to demand, to help people to adapt to new conditions.

Such a policy, planned in a flexible way, will enable the Community to meet the needs of all sections of the public, including improving the quality of life, and to shoulder its responsibilities towards the various groups concerned:

- transport users, with the objective of providing freedom of choice, though without running counter to the community's interests by the provision of an excessive range of means of transport.
- transport producers (transport undertakings), with the objective of obtaining optimal use of the factors of production by permitting specialization of tasks within a more integrated system, healthy competition and the creation of instruments for continuous adaptation.



- people employed in transport, who should be able to work in conditions comparable to those of industry.<sup>4</sup>

On the role of governments and public policy in bringing this policy to life, the Commission states:

The broader objectives of the common transport policy require a greater degree of intervention by the public authorities. This intervention should be at market level only where the proper functioning of the market calls for the application of correctives particularly in the event of crises or of imbalance between supply and demand. But the interventions of the public authorities in the creation and continuous adaptation of the transport network should, more than in the past, be made within the framework of the common transport policy.

Decisions concerning investment in plant and equipment, on the other hand, should so far as possible be taken at the level of the transport undertaking, and action by the public authorities in this connection should be limited to protecting the general interest.

The correct allocation of infrastructure costs may sometimes lead to a considerable increase in the financial burden to be borne by some users. This is the logical consequence of the method chosen, which tends to discourage users whose external cost is too high in relation to the advantage sought.

The choice of a system of allocating costs does not, however, preclude the use of other measures by the public authorities (priority for public transport, prescribed routes, prohibition of certain categories of traffic, etc.).

For goods transport, the common transport market will function freely subject to the essential corrective measures. As regards passenger transport the public authorities will be obliged to intervene, especially in urban areas, and measures in favour of public services are not to be ruled out.<sup>5</sup>

Community action in the field of control takes the form of various measures concerning:

- (i) decisions on continuing the arrangements for Community quotas.

- (ii) capacity control for international road haulage between Member states which is for the most part carried out under permits granted within the framework of bi-lateral quotas.

These measures, of interim character, and still based on the idea of permit quotas, should give way progressively to the supervision of capacity, intervention being limited to cases of serious market disequilibrium.<sup>6</sup>

Certain regulations concerning rates and conditions for the carriage of goods are also foreseen:

The system to be implemented by these Regulations concerning rates and conditions for the carriage of goods should be designed to take into account its close interdependence with the system of capacity control and should prepare the way for the progressive removal of all constraints on the formation of transport rates.<sup>7</sup>

In a 1975 document entitled A Report on the Present Situation of the Goods Transport Markets in the Community,<sup>8</sup> the Commission noted several trends which are significant.

Transport requirements expanded rapidly in the period 1963-1972, although one must note the general fall in the relative share of the railways in all goods transport. This trend occurred in all member countries, thus, one can conclude that the nature of road regulatory system in itself did not significantly influence the trend. Road transport volume grew from 44% to 50% at the expense of rail and waterway, regardless of the regulatory system. The total number of vehicles grew by 43% from 1962 to 1971. The number of vehicles used on own-account is far higher than the number used for hire. As far as capacity is concerned, the proportionate difference between for-hire and private is smaller; for example Germany had

4 times the number of vehicles in private transportation as in for-hire, but the capacity of the private vehicles was "only" 1.5 times that of the for-hire vehicles. In France the comparative figures are 12 and 3, and in Belgium they are 8 and 2.3.

Product substitution, growing industrialization, division of infrastructure costs and disparities in standards which in each state govern transport capacity and rates all cause distortions to competition.

The greater volume of goods transported by road between Member States remains subject to the provisions - sometimes divergent and contradictory (especially for transport on own-account and transit operations) - laid down in bilateral agreements which perpetuate a system based on traffic operations as conceived by the nationals of the Contracting States. The quotas stipulated in these agreements run not only counter to any process of integration but contrary to the compulsory provisions of Article 7 of the Treaty of Rome which prohibits any discrimination based on nationality. Furthermore, these quotas are distributed among the Contracting States on a basis which does not sufficiently reflect the real requirements of the market.

In its communication of October 1973, the Commission of the European Communities highlighted the role which the common transport policy could play in achieving the broad objectives of the European Community. The impact of transport in the achievement of broad social and economic policies is in the EEC's view, confined primarily to transport infrastructures. However, the EEC recognizes that the

provisions governing the operation of the transport markets capacity, transport rates and conditions, competition can have some effect in the same direction.

It should be recalled that the establishment of services whose purpose is to meet public interest has historically implied that the undertakings must fulfil certain "public service obligations", that is the obligation to operate the services, the obligation to provide transport facilities and tariff obligations. The EEC however, on 26 June 1969, adopted Regulation No. 1191/69 which enshrines for the three modes of transport:

- the principle of the elimination of the obligations inherent in the concept of public service,
- the maintenance or imposition of such obligations insofar as they are required to ensure the adequate provision of transport services.

In almost all the Member states, both passenger and goods rail services are required to comply with obligations, to operate services and to provide transport facilities. Other modes of transport, except for the regular carriage of passengers by road, are not subject to such obligations.

The obligation to operate services means, among other things, that certain low-traffic connections must continue to be operated; their deficits are covered from financial compensation by the state, in

accordance with Community regulations. It is well known that this situation arises from reasons which in principle fall outside the transport sector; the broad question is whether transport operations carried out on free initiative might be able to meet these transport needs without being a charge on public funds.

The obligation to provide transport facilities is a general obligation imposed mainly on the railways which, together with tariff obligations, may mean economic disadvantages for the undertakings concerned.

In an increasingly competitive market where there is a wide range of types of transport, the question of whether this obligation should be maintained is being examined by the EEC.

#### TARIFF OBLIGATIONS

For reasons of general economic policy, European governments usually have participated in setting the general level of transport rates applied by their railways. For other modes of transport, the intervention is not so generally applied.

#### THE VARIOUS TYPES OF RULES GOVERNING CAPACITY

Quantitative restrictions on capacity are designed to limit competition between means of transport and undertakings engaged in the operation of the same means of transport. Such restrictions are in



fact an effort to influence the level of transport prices indirectly, in order to bring them to a level which is considered adequate. The following instruments are generally used.:

- transport authorization quotas,
- the examination of the individual requirements of transport undertakings.

The first method is used in most cases; to date the second method has been applied only in the Netherlands.

#### TRANSPORT AUTHORIZATION QUOTAS

The quota system applied generally involves the establishment of quotas in advance. By its very nature it is relatively rigid. Consequently, and in the light of the experience, a permanent quota system could not ensure a sufficiently flexible and rapid quantitative adaptation of supply to demand.

Mention must be made of the fact that the quotas are as a general rule determined without reference to forecasts of requirements and for a period fixed in advance, which means that they are unable to cope with the often considerable market fluctuations. Because of its arbitrary nature, the quota system is liable to result in an excessive limitation of capacity and an unjustified increase in transport prices.

Finally, it must be remembered that the transport of goods by road is designed to fulfil special requirements - door-to-door transport without the need for trans-shipment, flexibility of the undertaking,

specialization, accompaniment of the goods, etc., which especially in the case of certain categories of transport, are now considered to be essential.

If a quota system involves restrictions on the fulfilment of users' transport requirements, this results, in the long term, in a shift toward own-account transport which is subject to practically no restrictions.

It is therefore difficult to consider a system (of charging, even one involving compulsory tariffs), capable of serving as more than a guideline for determining individual prices; at the most it may be regarded as having a psychological effect. In fact, if the market situation resulting both from the supply/demand relationship on the transport market and from the trend of costs is no longer reflected in the tariffs applied, transactions between contracting parties will inevitably adapt themselves to the actual economic situation.

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THE EUROPEAN ECONOMIC COMMUNITY -- ANALYSIS AND SUMMARY

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APPENDIX - EMAJOR ECONOMIC ISSUES TO BE CONSIDERED

## Control of Entry Through Regulation

- Historical reasons for.
- Economic & political arguments for continuation including critique of assumptions.
- Economic & political arguments for deleting entry controls or relaxing them including assumptions of arguments.
- Why exempt certain commodities?

## Market Structure--Motor Transport Industry

- Is the industry oligopolistic?
- Are there natural barriers to entry?
- Is the industry predominantly foreign owned?
- What is the source of competition? (Rail, Leasing, Private, BPX)
- Is there "perfect knowledge" of shippers?

## Rate Making

- Do rates reflect direct route mileage? Costs?
- Effect of tariff bureaux on the making of equitable rates.
- Does 30-day filing tend to make the motor transport industry less competitive?
- Is there cross-subsidization TL - LTL or LTL - TL?
- Are there/should there be regional differences in rates?

## Empty Backhauls

- What are the economic affects?
- To what degree are they, or are they not, an economic necessity?

## The Economic Affects of Reciprocity

- Plate Fees.
- Fuel Tax.
- Sales Tax.
- Would reciprocity increase the competitiveness of
  - (a) Ontario carriers
  - (b) Ontario manufacturers, shippers.
- Are plate fees as costs distinguishable in the rate-making process?

## The Economics of (a) Private Trucking.

(b) Leasing.

(c) Broker Drivers.

for the firm and in the aggregate.

## Supply and Demand

- Is there equilibrium?
- Is it fostered by control of entry & the regulation of the industry?

8. The Economics of Serving Small Centres

--Are there losing routes?

--Why?

--Advantages/disadvantages of freight pooling.

--Advantages/disadvantages of shipper education.

9. The Potential of Intermodal Movements.

10. Labour in the Motor Carrier Industry?

--To what degree is it organized?

--What are the affects on cost/service/safety?



APPENDIX - F

## PART 1:

## GENERAL OVERVIEW

By Dr. R.K. House PhD  
through The York - University of  
Toronto, Joint program on  
Transportation December 3, 1976.

SELECT COMMITTEE  
ON HIGHWAY TRANSPORTATION OF GOODS:  
REVIEW OF SUBMISSIONS

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PART I: GENERAL OVERVIEW

This review is divided into two parts: the general overview is organized along the lines of the ten issues outlined in the Select Committee's letter to Dr. R. Westin dated September 13, 1976; and, Part II, the critiques of the 22 submissions, summarizes and critiques each submission separately. As this structure leads to some overlap, there has been an attempt to focus most of the critical comment on Part I and treat Part II more as a summary Appendix.

## 1. CONTROL OF ENTRY THROUGH REGULATION

### Introduction

Of the economic issues to be considered, primary importance will be placed on the issue of control of entry through regulation. A good grasp of the arguments presented in this issue is necessary in order to understand many of the other issues.

The encompassing nature of the subject of trucking regulation is not the only reason for the importance of this issue. In recent years, trucking regulation has become an extremely controversial subject. Presently, Alberta (an unregulated province) has a Select Committee studying the situation. The recent experiences in foreign countries such as Australia and Great Britain has had an impact on this debate. Foreign experience has resulted in the primary question of whether deregulation is more desirable than regulation. In the past, the issue centered on whether or not deregulation would result in a workable system.

This section will outline the theoretical positions, make comments on the briefs, and provide some limited conclusions.

## THE THEORETICAL ARGUMENTS AGAINST REGULATION

The basic arguments for opposing regulation of the trucking industry are:

1. Regulation results in higher overall transportation costs through (a) operating inefficiencies, (b) excess profits, and (c) regulation costs;
2. Regulation misallocates resources;
3. Regulation impedes technological innovation;
4. Regulation results in a lower quality of service;
5. Regulation forces those with licences to operate inefficiently;
6. A free market is possible in the trucking industry;
7. Regulatory bodies over the long-run serve the interests of the regulated industry instead of the interests of the general public;
8. Experience in other countries proves that deregulation is both possible and desirable.

The primary concern of the deregulators is the alleged high cost of transportation. High costs in the trucking industry result from operating inefficiencies, excess profits or the expense of regulation.

The existence of operating inefficiencies and excess profits is related to the market structure. Both characteristics are common in a monopolistic situation. Although a superficial study of the trucking industry would lead one to conclude that the industry is not monopolistic or oligopolistic, more in depth analysis could result in radically different conclusions. The existence of a large number of trucking firms often leads to the contention

that the for-hire trucking industry is competitive. However, in order to determine the nature of the industry one must ask specific questions: how many for-hire trucking firms travel a particular route?; how many firms are carriers of a certain commodity?; how many firms carry a certain commodity along a designated route? In general, the deregulators claim that studying the industry in such a manner leads one to conclude that it is monopolistic or oligopolistic.

Monopolistic conditions often result in operating inefficiencies. In a non-competitive, protected market, a firm is less likely to concentrate on labour and time saving methods. Consequently, costs are likely to be higher than under competitive conditions.

Operating inefficiencies are not synonymous with a monopolistic market. Often firms in such markets are extremely cost conscious. However, other dangers exist. Under competitive conditions, a firm, in order to maintain a share of the market, must operate close to the point where marginal costs equal average costs.\* Failure in this respect would result in the firm losing its' customers. Similar constraints do not exist for the monopolistic firm. A sole firm in the market can arbitrarily raise its prices. Although such firms lose a certain percentage of their clientele, they often find it more profitable to service a small market at high prices.

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\* If a homogenous product exists, the firm must operate exactly at the point that marginal and average costs are equal. If this is not done, the firm will lose all its' business. However, product differentiation allows the firm a certain amount of latitude. In the trucking industry, a great deal of product differentiation exists. Two truck rides are certainly not identical.



Deregulators concern themselves not only with monopolistic prices and practices. Equally important to them are the costs that regulation impose. Licences themselves have costs and these costs are necessarily reflected in tariffs. However, it is not the official licence price that inflicts heavy burdens on the consuming public. Rather, it is the capitalized value of licences that has the most extreme effects. The difficulty in obtaining PCV authority results in licences being sold at extraordinary prices. The deregulators claim that scarcity has resulted in licences commanding a price far in excess of their official price. It is this aspect of licensing which has the most severe impact on tariff rates.

In order to apply for a licence, it is necessary for the prospective applicant to appear before a board. Board hearings are often long and involve numerous witnesses. The hearings can be extremely costly for the new applicant, and have several results. If the applicant is successful in acquiring the new licence, he will attempt to recover his costs from his customers. If he is unsuccessful, the costs of applying might deter him from entering further applications. Consequently, the continuation of the monopolistic aspects of the trucking industry is further facilitated. Many who desire entry into the industry may never apply. Prospective applicants might hold the opinion that the possibility of gaining a licence is slim, and thus, they are unwilling to forfeit their financial resources to costly hearings.

Regulation entails yet another cost on society. Rules and restrictions are not followed by all. In order to enforce regulation, a small army of administrators is necessary. The costs of administration are paid by the tax payers of the jurisdiction.

The economic costs that trucking regulation imposes on society are not limited to higher tariff rates. Those favouring deregulation maintain that regulation misallocates resources. One of the basic conditions in order for optimal resource allocation to prevail is that resources may freely enter and exit any market. Only under this circumstance will capital be allowed to engage in its most productive use - i.e. the activity that generates the highest rate of return. Obviously, trucking regulation that controls entry, deters the ability to maximize the benefits of economic resources.

Regulation of the for-hire trucking industry not only misallocates the resources of society in general but distorts the markets of competing transportation modes. Both inter and intramodal competition are affected by regulation. Regulation of for-hire trucking makes the industry less attractive than private trucking carriage or rail carriage.

The general position of the deregulators is that with elimination of entry control many economic costs to the industry and to society will be removed. Whether deregulation will result in more or less capacity in the for-hire trucking industry, is both inconclusive and unimportant. The important point is that deregulation could give society more benefits with the same economic resources. Presumably such a result would raise the general welfare.

Deregulators claim that trucking regulation hampers technological innovations. In their view, regulation results in inertia in the system and a satisfaction with the status quo. The mere fact of a protected

market stifles progress. In a competitive market there exists a constant pressure to innovate and adapt to change. Attempts by individual firms to increase their share of the market leads to a forward looking industry. Consequently, the industry has a progressive thrust.

An important contention of deregulators is that regulation adversely affects the quality of service within the for-hire trucking industry. The existence of the monopolistic markets created by regulation allows trucking firms to ignore customer needs. If business can not be taken elsewhere, firms will not stress quality of service. Thus, standards of dependability will be low, delivery will be slow, and losses and damages will be high.

Aside from the voluntary operating inefficiencies that monopolistic conditions allow the firms, regulation forces certain inefficiencies on the for-hire trucking industry. Regulation forces firms to abide by existing route restrictions. Decontrol of entry would allow innovation. In time, a restructuring of routes would occur; a more rational route method with more efficient utilization of vehicles would be developed.

It is commonly suggested by the deregulators that regulation increases empty miles.\* If deregulation had the effect of eliminating the inefficient competitors, thus lowering the overall number of firms in the industry, empty miles would necessarily decrease. Lessening of route and commodity restrictions, combined with the decrease in the number of

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\* Empty miles are those miles which a truck travels without a haul. The question of empty miles is discussed in Issue 4 of this overview. It is concluded that a certain percentage of empty miles is inherent in the industry and has little or no bearing on the question of regulation. Under Issue 1 the discussion of empty miles is focused only on those that depend on regulation or deregulation.

firms would result in more flexibility and increased business for each truck. However, if deregulation increased the number of firms in the industry, there would be no guarantee that empty miles would decrease. Although increased flexibility would prevail, less business per firm could actually increase empty miles. In a situation such as this, the deregulators claim that increased efficiency in other aspects of trucking would more than offset the detrimental effect of increased empty miles.

If the former condition prevailed, other benefits would result: the decrease in empty miles would result in less highway congestion, lower consumption of scarce energy resources, and a cleaner environment.

An important aspect of the deregulators' argument is the contention that a free market is possible in the trucking industry. There exists two basic market structures that cannot operate freely - those that possess natural barriers to entry (the natural monopoly) and those that are destructively competitive.

The natural monopoly is characterized by decreasing unit costs over the entire industry; that is, the existence of large economies of scale. Those in favour of regulation never argue that trucking is a natural monopoly. Consequently, the deregulators do not address this question.

The regulators claim that it is the existence of destructive competition in the industry that necessitates regulation. A destructively competitive industry is one in which competition is so intense that the quality of service can not be maintained without restrictions.



Economists have established certain structural criteria which are found in destructively competitive industries. The most important element is high fixed costs in relation to total costs and long periods of over-supply. This will result in extended time spans where marginal costs are below average costs.\* If the number of sellers are large in comparison to market size, it is unlikely that sellers will act on their joint interests and avoid competition. Consequently they may operate at a loss for considerable time spans.\*\*

An analysis of the trucking industry illustrates that it contrasts sharply with the structural criteria set out above. In the trucking industry fixed costs are not high; in fact they are extremely low. (A widely accepted view is that ten percent of trucking costs are fixed and 90 percent are variable.)\*\*\*

Ideally, a firm attempts to price its service at a level that will cover costs and provide a reasonable rate of return. Even if this is not possible, a firm will always attempt to cover its variable costs. If the firm does not recoup these latter costs, it will drain its financial resources and eventually face bankruptcy. The high percentage of variable costs in the trucking industry insulates it from long periods of revenues substantially below costs. A. Kahn explains this idea in The Economics of Regulation:

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\* That is, the added cost of producing one more unit of output is lower than average costs (where average costs are simply total costs divided by total output). In this type of situation, the businessman will find that he can maximize his profits (or minimize his losses) by pricing his product at the level of marginal costs.

\*\* The periods of operating at a loss arise because average costs are higher than prices (set equal to marginal costs).

\*\*\* Kahn, A., *Economics of Regulation* V2, John Wiley & Sons, Inc. N.Y., N.Y. 1971, p. 179



"..... since it is variable costs that fix the floor below which prices cannot go (at least not for very long), a low ratio of variable to total costs means that price can for extended periods of time fall far enough below average total costs for a large enough proportion of firms in the industry to threaten its ability to provide continued service."\*

A second argument advanced by the deregulators is that trucks, which are the major investment of the trucking industry, inherently possess characteristics which reduce the possibilities of persistent excess capacity. The short life of trucks results in the carriers constantly deciding whether to replace their capital equipment. Presumably, if revenues do not cover costs, they will neither desire, nor be able to, replace their capital investment. In the trucking industry additions to capacity may occur in small increments. Investment in a truck is a rather small investment. This situation is vastly different from an industry in which economies of scale are large and additions to capacity, in order to be profitable, involve large investments. Thirdly, because trucks are mobile, they can move in and out of various markets as demand warrants. The short life of trucks, the small investment in the acquisition, and their mobility, suggest that long periods of over-supply in the industry are highly improbable.

Another characteristic that protects the trucking industry from destructive competition is the existence of product differentiation. Often customers will not do business with the lowest cost carrier if they are of the opinion that the low cost is offset by low levels of dependability, safety, speed or responsibility. Thus, destructive competition in the form of rates set below costs will not always drive established trucking firms to the point of bankruptcy.

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\* Ibid, pp 178-179

The historic reason for implementation of regulation, generally is to protect the public interest. Regulation is enacted to curb private economic power or to provide overall stability. The deregulators are concerned that, over time, regulation has evolved into the protector of the trucking industry. D. L. McLachlan, a professor of economics at the University of Calgary, and a prime spokesman for deregulation writes:

"..... trucking regulation has not served Canada well. Its supporters are (i) most truckers, especially their trade associations; and (ii) most provincial governments."\*

Deregulators, in an attempt to prove that their position is not utopian and is indeed feasible, often discuss experiences in other countries. Thomas Gale Moore studied the effect of regulation in five European countries: Great Britain, West Germany, Belgium, the Netherlands and Sweden. He concludes that:

"Strict regulation leads to higher rates, poorer service and a decline in efficiency. The outcome of deregulation is quite apparent in Great Britain and Sweden. Deregulation, while resulting in lower rates does not lead to cut-throat competition or instability."\*\*

In West Germany, where strict regulation of the trucking industry exists, Moore notes that there is some evidence of poor service to remote areas. However, in commenting on the other four jurisdictions he writes:

"In none of the remaining countries studied were there any reports of difficulties in securing professional trucking service to remote areas. Even Northern Scotland

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\* D. L. McLachlan, "Canadian Trucking Regulations, in The Logistics and Transportation Review, Volume 8, Number 1, 1972 (in CFIB brief)p 5

\*\* Moore, Thomas G., Trucking Regulation, Lessons from Europe, American Enterprises Institute for Public Policy Research, Washington, D.C., 1976, pg. 4 - 5

and northern Sweden seemed to be well served. We can conclude therefore that strict regulation leads to poorer service than is offered in a relatively free market."\*

Of the countries studied by Moore, only Sweden has conditions similar to those of Ontario. Sweden is a large country with a sparse population, a rough terrain and a harsh climate. Liberalization of regulation has not adversely effected small Swedish communities; consequently, the deregulators conclude that elimination of regulation in Ontario would not result in the disappearance of service to outlying areas.

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\* Ibid, p. 128

## THE THEORETICAL ARGUMENTS FAVOURING REGULATION

The basic arguments of those favouring trucking regulation are:

1. Regulation does not cause overall transportation costs but shifts price structures;
2. Regulation does not allow firms to be insensitive to prices and costs because of (a) shipper pressure, (b) competition from other modes, and (c) fear of further trucking opposition;
3. Free entry would be detrimental to those who paid the capitalized value of a licence to operate;
4. Deregulation would have adverse social affects; (a) low wages, (b) long hours of work, (c) unsafe vehicles and (d) ruination of small truckers, small shippers and small communities;
5. The trucking industry is inherently chaotic and unstable and in order to function must be regulated;
6. Regulation is necessary to maintain the quality of service;
7. Non-economic considerations justify regulation;
8. Deregulation would allow foreign carriers to operate freely, resulting in a loss of business for Ontario truckers;
9. Despite all the criticisms of regulation, it works.

The pro-regulators are of the opinion that regulation, rather than resulting in higher overall costs, merely modifies the tariff structure. The most attractive traffic (full truck loads) often pays slightly higher tariffs given regulation. However, the less attractive traffic (less than full truck load) often encounters tariffs that are significantly below costs.

Consequently, regulation results in the upper and lower limit of the tariffs being less extreme. However, this equalization of rates does not imply higher overall costs.

The regulators argue that within the system pressures exist which curtail truckers from acting in an monopolistic manner. If trucking firms were insensitive to cost and time saving mechanisms, they would lose their markets. Whether for-hire trucking firms have monopolistic positions or not, enough competing modes of transportation exist so that operating inefficiencies will not be tolerated. Another key aspect that is significant in producing trucking efficiency is shipper pressure. To a large extent, shippers have a collective voice. Although not all shippers are organized, there are important shipper groups. These groups are extremely verbal and aid in forcing trucking firms to operate competitively.

The same two forces (competition and shippers) that result in the trucking firm being cost conscious, also act to assure a reasonable rate of return. Excessive profits\* will result in the trucking firm suffering from diminishing markets and shipper opposition.

A further consideration of existing trucking firms is the possibility that other firms will be licensed. Fear of competition often curtails any oligopolistic tendencies which accompany regulation.

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\* As a result of operating at a point where marginal costs do not equal average costs.



Those favouring regulation often mention the plight of truckers who have paid the capitalized value of their licence to operate. Many trucking firms did not appear before the Board in order to acquire their licence. Instead, they were purchased from other operators. Demand for PCV licenses is so significant that they command a price far greater than their official price. Deregulation would completely eliminate the benefits of those who have invested in licenses. The pro-regulators claim that any move that depleted investments in licences would be discriminatory.

Deregulation would have adverse social effects not only for truckers, but for other sectors of society as well. Presently, organized labour predominates in the trucking industry. As a result wages are adequate, the hours of work reasonable, and a good standard of safety is maintained. The regulators believe that free entry would result in many additional entrants into the industry. Many of those who enter will be brokers who will work long hours at inadequate wages. Many of these operators will not maintain safe vehicles. In general, highway accidents would increase. Consequently the traffic safety of the general public would be jeopardized.

The pro-regulators also maintain that it is the political interests of the province and the nation to protect the small family trucking business, the small shipper, and the small community. Free competition could result in small truckers, who are less efficient and less competitive, losing their entire life savings. Small shippers and the smaller communities in Ontario, so the argument goes, would find that in the absence of regulation service quality would drop.

The pro-regulators are not only concerned that deregulation would be harmful to certain sectors, but fear the impact of deregulation on the trucking industry. The over-supply, as a result of the additional entrants (that deregulation will bring), will have serious effects on rate structures. Consequently, the stability of the industry would be in jeopardy. The regulators claim that the low investment threshold in the industry results in many irresponsible people entering. These people, because of their lack of knowledge of cost conditions, operate at a loss. Such practices force other operators to do likewise in order to remain competitive.

Thus, historically, the argument for regulation is based on the theory of destructing competition. Without regulation, the argument goes, the extreme competition would lead to many small inefficient firms, a high bankruptcy rate, and a lower level of service. Minimal economies of scale and low capital requirements are offered as the factors leading to, or causing cut-throat competition.

As evidence of the existence of destructive competition, the pro-regulators cite the period immediately prior to entry control. The following is an appraisal of the United States trucking industry prior to the Motor Carriers Act:

"there was then a surplus of transportation of all kinds. Competition became destructive. Large numbers of small operators were engaging in motor transportation. Their rates were not published. Many of the smaller operators were not aware of the costs of doing business and they made such rates as seemed required to secure traffic. Many of them failed and went out of business, but others promptly took their places. There was no rate structure, variations in individual rates were wide, rates were constantly changing, charges to various shippers using the same carrier were often different, and the service was

neither stable nor reliable. Shippers found it increasingly difficult to do business with motor carriers because of the unreliability of service and the financial irresponsibility of many of the carriers, and they were distressed at fluctuating rates and differential treatment."\*

The argument, which may conveniently be called the "chaos"\*\*. argument for regulation, is not seriously disputed - at least in an historical sense - in the submissions to the Select Committee. What is at issue, however, is the relevancy of this argument in today's world, several decades after the great depression.

Some regulators, rather than concentrating on the non-feasibility of the free market, focus on the quality of service. For many regulators, the important question is quality of service. To promote the general economic development of Ontario, protection of the trucking industry is necessary. In a purely competitive market, it is unlikely that revenues would be high enough to provide daily service to all parts of Ontario. If deregulation and a more competitive market was instituted, monopoly profits would be reduced. However, for the same quality of service, subsidies by the tax payers would certainly increase.

Many regulators argue that it is non-economic assumptions on which they base their position. Economic efficiency often involves value judgements that are opposed by regulators. Generally, the economist opposes internal

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\* Marvin L. Fair and Ernest W. Williams, Jr. Economies of Transportation, rev. ed. (New York: Harper & Bros., 1959), p. 488 in Kahn op. cit. p. 178

\*\* The historical background to the "chaos" argument is outlined in A. Kahn, Op. Cit., and in several other works.

subsidization. However, governments and regulators are often of the opinion that certain sectors deserve subsidization. In the case of trucking regulation, they are maintaining that aid is necessary for those in remote areas.

The regulators believe that if there is no method available which achieves the goals of society and maintains economic efficiency, then regulation is a possible option.

In discussing deregulation, it must be remembered that Ontario is surrounded by other jurisdictions. All the other jurisdictions regulate for-hire truckers. If deregulation were introduced in Ontario, any trucker would be able to come into the province and solicit any traffic available. It is possible that such activity could have extremely detrimental effects to the Ontario trucking industry. Deregulation would mean more competition not only on traffic between Ontario and other jurisdictions and vice versa, but on internal Ontario traffic.

Perhaps the most compelling argument for regulation is that the current system works. Goods are transported with reasonable efficiency. Technical improvement does takes place. The system is not stagnant.



## ● Submissions in Support of Continued Entry Regulation

Of the submissions that address the question of easier entry, the CTA, the OTA, the CITL, the Teamsters Joint Council #52, Ryder Truck Rental, and the briefs of licensed carriers, call for continued regulation. The CTA, the OTA, J. Kanuka, and the licensed carriers all represent the interests of the licensed carriers. The others in favour of regulation also represent special interests. The CITL, although opposed to deregulation, favours the right of shippers to lease vehicles and employ drivers from the same source. The Teamsters Joint Council's interest obviously lies with organized labour: the PCV authorities in general employ union labour, whereas those without licences generally do not employ organized labour. Ryder Truck Rental, while agreeing with regulation of the for-hire trucking industry is opposed to regulation of leasing companies.

The most complete and comprehensive support for continued entry regulation is found in the submission of the OTA. The arguments they adduce to support their position are of two types. First, there is the general argument that under the present system of entry regulation the trucking industry is providing good service at reasonable rates (there are no monopoly profits, there is an adequate supply of equipment, all shippers and communities in Ontario are being served, new licence authorities are granted when the need arises, etc.) Secondly, there is the general argument that in the absence of regulation, chaos would result (destructive competition, excess supply, rates below costs, loss of service to smaller communities, higher rate of bankruptcies in Alberta, falling maintenance standards, experience of dump truck industry, unfair competition from foreign carriers, survival of smaller carriers, etc.)



One of the OTA's points is that no monopoly profits are currently being earned by the industry. Evidence is given that the industry has on average an operating ratio of .97. Without disputing their evidence (which we assume to be valid), there may be two flaws in the position the OTA is attempting to advance. First, an operating ratio tells us nothing about the rate of return on invested capital.\* Second, an operating ratio begs the question as to whether or not there are additional costs imposed on an industry because of regulatory inspired inefficiencies.

The OTA raises the very serious problem of servicing small remote communities. However, while not disagreeing with the validity of the OTA position, it could be argued that if the costs of services are higher to these areas then these costs should be reflected in the price of transportation. If the for-hire carrier industry can collect revenue sufficient to cover costs and a reasonable profit, these areas will continue to be serviced.

#### ● Submission in Support of Deregulation

The submissions that support easier entry are those by the Ontario Members of Meat Packers Council, the Organization of Independent Truckers, Consumers Glass Company, the Canadian Federation of Independent Business and the Canadian Manufacturer's Association. It should be noted that the majority of these organizations represent the interests of shippers, or the "illegal" carriers.

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\* For example, conventional wisdom says that a 1% earning on sales for the retail grocery business is adequate and - at least historically - and 8% return on sales for the trucking industry is adequate, or at least a goal whose attainment is desirable. Both of these bits of conventional wisdom may have some historical veracity given the amount of invested capital in the retail grocery and the trucking business, but - and this is the point - without knowing the amount of capital involved (and relative risks, etc., etc.) no one can test these hypotheses.

The position of those in favour of easier entry into the for-hire trucking industry is best represented by the Canadian Manufacturer's Association. The CMA's submission explains the structural reasons why cut-throat competition and over-capacity are unlikely. The Organization of Independent Truckers, although attempting to prove the benefits of deregulation, ignore many of the necessary arguments. However, the OIT, despite this weakness, makes valuable information on the effects of deregulation in other countries available. The experience of the Australian trucking industry which was deregulated in 1954 is particularly worth studying.

It is often argued that regulation is necessary in order to maintain certain standards within the trucking industry. However, rules of this sort need not be linked with entry regulation. Rules applying to driver safety, vehicle standards and insurance requirements are possible without entry regulations.

#### ● Exemption of Certain Commodities

Hearst Lumbermen's Association, while not favouring complete deregulation, has put forward the position of partial deregulation. The H.L.A. brief is alone in requesting additional exemption of commodities. Specifically, they call for the exemption of lumber carriers from the PCV Act.

The H.L.A. maintains that the extreme competitiveness of the lumbering industry results in efficient delivery of the product as a necessary condition for firms to survive. They state that licensed carriers are acquiring practically all the share of lumber haul which they are prepared to carry, due to their equipment limitations.

The evidence presented by the licensed carriers, contradicts the H.L.A. assumption that PCV authorities have little additional lumber hauling capacity. In 1974, MacKinnon Transport Ltd. encountered 400 empty hauls in the area north of North Bay along Number 11 Highway and west on Highway 17. In 1976, not a week has passed in which MacKinnon did not have an empty backhaul from Northern Ontario.

Manitoulin/Cooper Transport Ltd. has had experiences similar to those of MacKinnon. The firm has 29 tri-axle trailers and 12 four-axle trailers capable of hauling lumber. They offer trailers for lumber haul daily. Manitoulin/Cooper have offered greater capacity than has been required for lumber hauling.

The OTA brief refers to a study conducted by the Ministry of Transportation and Communications. The study found that in the Hearst region (Districts of Cochrane, Timiskaming and that portion of Nipissing north of North Bay) there would be a shortage of trailer capacity if 30 percent of the available trailers were used to haul other products or if the lumber manufacturers withdrew from participation in rail agreed charge contracts.

OTA appendices 12 and 13 indicate that a PCV authority for the hauling of lumber in the Hearst region is not difficult to acquire.

The evidence presented by MacKinnon suggests that the H.L.A. assumption of under-capacity for hauling lumber on the part of PCV licensed carriers is not true. However, if the shippers do encounter under-capacity, further PCV licenses are easily obtainable.

## ● Conclusions

All of the submissions reviewed suffer from one common drawback: their arguments, either for or against entry regulation, are largely unsupported by hard statistical evidence. This is because there is little statistical data on the Ontario trucking industry.

On the side of the deregulators, we have the arguments that regulation increases overall transportation costs, misallocates resources and creates inefficiencies. Also support for deregulation includes the theoretical argument that structurally, the trucking industry does not meet the criteria established for truly destructive competition.\* The experiences cited in certain other countries tend to question the validity of the "chaos" argument. This much is clear: the remaining arguments of the deregulators lack conclusive proof. None of the submissions demonstrate that entry regulation in Ontario has led to inefficiencies, resource misallocation, or higher costs.

The arguments that in the British experience rates on TL traffic dropped by 10% after deregulation may only demonstrate the existence of cross-subsidization (to be discussed below) and may not prove that an inherently regulated industry operates with higher costs.

Empirical work (such as that by D. L. McLachlan) in Canada is not conclusive on this point. If all other things were equal (geography, load factors, population density, type of traffic, etc.) regression analysis may prove the higher costs of regulated jurisdictions; however, "other things" are

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\*To repeat an earlier point, a truly destructively competitive situation would have to involve long periods of excess supply and prices low enough that revenue requirements are not achieved.



not equal. (As one small refutation of McLachlan's findings, consider that the lowest rates on household goods movements are probably found on intra-Manitoba moves - a regulated province, and the highest rates in Canada are found in B.C. - a regulated province and Ontario - a partially regulated province.)

On the side of the pro-regulators, there is some agreement that lack of regulation can lead to somewhat unstable conditions (the higher rate of bankruptcies in Alberta, the experience of the Ontario dump truck industry, the experience of the trucking industry during the depression, etc.) What is not clear, however, is at what point this greater degree of instability becomes harmful.

The contention that the small truckers, the small shippers, and the small communities would suffer as a result of deregulation remains a contention only (in fact, the experience in Sweden may even refute this). (This point is discussed again under Issue 3 below.) The argument that complete deregulation may lead to problems with foreign carriers is not refuted and is probably valid. The arguments that deregulation leads to lower standards (maintenance, longer hours, etc.) could be answered by providing legislation to handle these problems.

"no one, not even the proponents of deregulation, suggest that regulation of financial responsibility, insurance requirements, vehicle safety requirements or driver requirements should be eliminated." (OIT submission, pg. 35)



## 2. MARKET STRUCTURE - MOTOR TRANSPORT INDUSTRY

Generally the submissions and other available studies are inadequate in their analysis of the market structure of the motor transport industry. Although some data was collected (particularly by the OTA), this information is not sufficiently detailed to describe the industry as clearly as might be desired. Specifically, there is very little information on private trucking (a constant problem in studies of the Canada motor transport industry), sources of competition, and foreign ownership.

### ● Is the Industry Oligopolistic?

Oligopoly is a market structure characterized by a small number of firms and a great deal of interdependence among the firms. One of the primary reasons for the growth of oligopolistic markets is the predominance of economies of scale. The pure oligopoly is characterized by firms producing homogeneous products.

On the surface, the trucking industry as pictured in the submissions does not resemble the above model. The OTA which represents a significant proportion of the industry, claims 1,288 members. For those firms on which it has data, 72% operate with less than ten vehicles. Countering this, the CMA believes (or fears?) that regulation does create monopolistic or oligopolistic situations, however, no evidence is given to substantiate this position.

From the evidence available, it is difficult to determine the degree to which the industry is or is not oligopolistic. The total number of firms in Ontario is somewhat irrelevant. What is of importance, for example, is the number of Class A haulers licensed on specific lanes, or the number of Class C haulers licensed for certain communities, etc., etc. In other words, although the trucking industry as a whole does not produce a homogeneous output, specific situations (general freight, LTL, Peterborough/Toronto) may be characterized as homogeneous and judged to be or not to be oligopolistic.

#### ● Are There Natural Barriers to Entry?

The most common opinion -- in fact one of the most common arguments given in support of regulation -- is that there are very few natural barriers to entry (low initial capital requirements, etc.). "Natural" in this sense is non-regulatory inspired. The CMA comments on this question in their submissions. They observe that a natural barrier to entry exists; (1) where large economies of scale predominate; (2) where fixed costs are so high that for an industry to make profits competition is infeasible. They cite S. Joy, "Road Haulage in Australia"; 1964 Oxford Economic Papers p. 279 as evidence that the trucking industry does not possess either of these characteristics.

There are, obviously, regulatory imposed barriers to entry, and the various submissions strongly disagree as to both the necessity and the severity of these barriers. On the one hand, the OIT argues that because of the cost of appearing before the Board and because of a certain inertia in the system, the regulatory barriers are too severe.

On the other hand, and the evidence they provide supports their position, the OTA argues that new licenses are granted (to either new or existing carriers) as the need arises.

● Is the Industry Predominantly Foreign Owned?

Too little evidence on this question is available to pass comment.\*

● What is the Source of Competition?

Very little evidence -- except, of course, in the case of "illegal" operators -- is given on the question of competition.

● Is there "Perfect Knowledge"\*\*\* of Shippers?

Given that none of the submissions representing shipper interests seriously complained about the lack of knowledge,\*\*\* one would have to conclude that this is not a major point. Further, the OTA's submission refers to their organization's Ship-by-Truck Directory which lists all carriers (whether they are OTA members or not) and all communities. With this document in hand, a shipper would only have himself to blame if he did not have, or could not get through the medium of the telephone "perfect knowledge".

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\* The OTA submission mentions in passing, page 67, that some Ontario companies are subsidiaries of U.S. firms. It is also common knowledge that British and Australian interests are involved in the Ontario trucking industry.

\*\* Perfect knowledge is an utopian concept. In its classical form, all involved in the market must be familiar with all the activities of the industry for "perfect knowledge" to exist.

\*\*\* The shippers do complain, however, of not having access to the rate committees of the tariff bureaux. See below, Issue 3.

### 3. RATE MAKING

The submissions in general contain a substantive amount of material pertaining to rate making. An important question addressed by several briefs is the need for an appeal body: the Ontario Trucking Association, the Canadian Tariff Transport Bureau Association and the Ontario Northland Transport Commission all call for the institution of a review procedure. Under this procedure, the general public would have the ability to challenge rate increases which it considered unjust. The CTTBA suggests that any such appeal body should be authorized to hold joint hearings with the Quebec Transport Commission and be able to adjust rates in the manner called for by the evidence presented.

The recommendations of an appeal body could be of particular importance if regulation of entry continues in the current fashion. Restricted entry, some argue, can lead to collusion on the part of existing firms and unreasonable profits. The existence of an appeal body will act as a preventative measure to this type of behaviour. Deregulation, of course, would make the industry more competitive and thus lessen the need for an appeal body. The CTTBA makes the suggestion that any application to such a body be accompanied by a fifty dollar charge in order to avoid frivolity.

Since 1963, every public carrier in Ontario having more than four vehicles (and all class 'H' carriers) licensed under the PCV Act have been required by law to file their tariffs with the OHTB. Presently, Class 'E'; 'FS' and certain 'F' licencees have been exempt from this provision. The Ontario Trucking Association proposes mandatory rate filing for all public carriers.



The Canadian Industrial Traffic League is in favour of rate filing for freight forwarders. As public carriers, they argue, there is no reason for them to be exempt from rate filing.

● Do Rates Reflect Direct Route Mileage? Costs?

No direct evidence is introduced on this issue; however, any empirical work on trucking rates show that mileage (which, of course, affect costs) influences rates. This is not to say that rates vary directly with mileage. There are many mitigating factors: (i) certain non-mileage related costs (for example, pick-up and delivery costs) decrease in importance, on a per mile basis, the longer the haul; (ii) certain traffic lanes or certain commodities have better load factors and therefore rates on two equidistant hauls in different areas may differ; (iii) certain lanes may have better back hauls and this may be reflected in rates; (iv) competitive factors (rail, private trucking) may lessen the strict adherence of rates to mileage in certain areas of the province.

In jurisdictions where uniform mileage rates are imposed by regulatory authorities, problems have occurred simply because the above factors have been ignored.\*

● Effect of Tariff Bureaux on the Making of Equitable Rates

The submissions that concern themselves with the effect of tariff bureaux on rates divide into two camps. Those, such as the Niagara Frontier Tariff Bureau or the Canadian Transport Tariff Bureau Association,

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\* R. K. House & Associates Ltd., Manitoba For-Hire Trucking Industry Productivity Audit, February, 1974. Or, for example, see H.L. Purdy, Transport Competition and Public Policy, UBC Press, 1972 for a discussion of why rates may and do deviate from a strict mileage correspondence.



that claim (i) the bureaux are of a great service to their members and to shippers (distributing and consolidating information), (ii) bureaux aid interline arrangements (iii) and bureaux perform a whole host of functions (cost studies, traffic studies, rate filing, self-policing) that would not be possible for individual carriers. The second camp, for example the CITL, do not seriously dispute the claims of the bureaux, but they do argue that bureaux impede the filing of independent actions by individual truckers.

The authors of this review have recently completed a study of motor carrier tariff bureaux in Canada, and the conclusions are of some interest in the present context.

"If it is possible to state the conclusion of this study succinctly, it is perhaps this: the popular notion that the tariff bureaux operate solely in the interest of the carriers and to the detriment of the shipping public would appear to be erroneous. The evidence that has been gathered suggests that the tariff bureaux, perhaps not as a matter of primary intention, but as a matter of fact, play a vital and important role in the functioning of the for-hire motor vehicle industry. They make possible the participation of small firms in national and international movements and, therefore, may enhance the competitive climate of the industry. On the shippers' side, they provide a source of information on rates, tariffs, competing carriers and so forth. By having a central institution as a reservoir of this information, the potential shipper can easily determine the rates at which he is able to have his commodities transported. There may, however, be features of the role of the tariff bureaux which off-set these positive advantages. In a study of this nature it has not been possible to either confirm or repudiate the suspicion that bureaux may have an adverse effect on rates for example."\*

On the specific point of whether or not tariff bureaux impede the filing of independent actions, the CTTBA writes in their submission:

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\* R. K. House & Associates Ltd., Tariff Bureaux in Canada: A Study Prepared for the Department of Transport, Ottawa, August, 1976, pg. 2.

"Bureau tariffs presently contain many items issued on an independent action basis; in fact, 43% of items published in the Bureau's Tariff No. 90-D, which is the main commodity tariff governing rates within Ontario, are of an independent action nature." (pg. 11)

And, from the study referred to above:

(commenting on the NFTB)

"Although the right of independent action is guaranteed both by Bureau By-Laws and by United States laws, Bureau members do not find it necessary to use these procedures." (pg. 82)

(commenting on the CHGCTBA)

"In recent years, the household goods tariffs have been increased once or twice a year by means of general rate increases. Although independent actions and flagging are permitted, historically, they have been rare for these tariffs.

"Frequent and irregular changes (increases and decreases), however, are the rule for the other Bureau tariffs. For these tariffs, general rate increases are not used. Here too, independent actions are permitted and are quite common." (pg. 69)

#### ● 30-Day Filing

Ontario Northland Transportation Commission, the CMA, and the Ontario Members of Meat Packing Council all favour immediate effectiveness of rate decreases. On the specific issue as to whether or not 30-day filing makes the industry less competitive, no clear answers or evidence is given in the submissions. One would have believe, however, that the fact that certain carriers do not have to give 30 days notice and the fact that rate decreases require 30 day filing could not assist competition. The unanswered question of course is the severity of the issue.

● Is there Cross-Subsidization?

The existence of cross-subsidization is central to the whole regulate/deregulate argument. On the one hand, if it can be shown that regulation has led to cross-subsidization - particularly TL over LTL, and perhaps to a smaller extent the large community and large shippers generally subsidizing the small community and small shipper, then the deregulators can make a strong case for letting the open and unregulated market forces bring rates into a more cost oriented position. The converse side of the argument on the part of the pro-regulators is either that cross-subsidization does not occur or that if it does it benefits the small shippers and small communities.

The submissions to the Select Committee, although not lacking in opinions on the subject, have a paucity of any "hard" information on the subject. The first impression that one is left with after reading the submissions of the licensed carriers is that, although some of them may not want to say it in so many words, cross-subsidization does exist.

The OTA's stance that "there is no fat in the present rate levels charged by the regulated industry, considering their present service obligations ..... etc." may be true in the aggregate but it would not appear true for all traffic. Although the OTA does not admit this in so many words, it is difficult to impute any other meaning to phrases such as "select traffic", "attractive traffic", etc. versus phrases such as "less attractive traffic", "unprofitable traffic", "marginal traffic", etc. The point is, if all rates were totally cost-based why would any traffic be more or less attractive (from a revenue or profit point of view) than any other traffic? One is led - simply by the logic of the OTA's own arguments - to

the inescapable conclusion that the traffic the regulated carriers are losing to the "illegal" truckers is the very traffic where rates are cross-subsidizing the less attractive LTL traffic.

Other submissions from regulated truckers (Manitoulin/Cooper, Thibodeau-Finch) are more candid in their comments on cross-subsidization.

"Leasing companies with direct affiliation to driver pools have had a highly adverse effect on our business. These parasites have zeroed in on the best business enjoyed by our company, business which went a long way to offset the large amount of losing business which every class 'A' carrier handles for the 'privilege' of being a franchise holder." (Thibodeau-Finch, pg. 8)

To digress for a moment, it is impossible at this point not to add a further comment on Issue #1: Control of Entry Through Regulation. In some ways the issue of cross-subsidization lies at the very heart of the issue of entry control -- particularly with respect to Class A carriers. Although there might be some disagreement as to a strict definition of cross-subsidization, let us for the moment define it to be a situation where the price of one product (say LTL freight) is set below marginal costs and the price of another product produced by the same firm (say TL freight) is set above marginal cost.\*

If, as a matter of public policy, it has been decided that a particular jurisdiction wants to have a regulated trucking industry somewhat like a public utility, it may be entirely possible for the resulting rate schedules

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\* The disagreements may occur in the case of an industry with economies of scale. That is, where marginal costs (the costs of producing one more unit of output) are below average costs, prices set equal to marginal costs, will result in a revenue shortfall. In the absence of government subsidies, this particular industry will have to set some prices above marginal costs. Although elaborate rules can be invoked (inverse elasticity rule) to suggest how far above marginal costs prices "ought" to be set, in the absence of reliable information on demand elasticities, disagreements can and do occur on just when cross-subsidization takes place.



to give the appearance of cross-subsidization. To elaborate on this, a class A trucking enterprise that is required by regulation to serve a certain route daily or even more frequently (and this may be true whether or not it is stated explicitly in the licence); that is required to serve any and all shippers; and, that is required to serve all the small communities along its route, is faced with a completely different set of costs than the "illegal" trucker. This latter enterprise does not have the cost of maintaining a string of terminals or call stations, the cost of owning and operating enough vehicles to provide the same frequency of service, etc.

The difference between these two types of operations may be seen in each enterprise's marginal costs of handling TL freight. The class A carrier's marginal cost may well include\* some of the common costs of production (a portion of terminal costs, "daily service costs", etc.) and therefore be significantly higher than the marginal costs of the "illegal" hauler. This may well lead the casual observer to conclude that the TL rates of the class A carrier are subsidizing the LTL rates.

The question as to whether or not cross-subsidization occurs hinges to a great extent on the type of operation being considered. To the extent this is true, the decision as to whether a jurisdiction wants entry controls depends on the type of trucking industry desired. On the one hand, deregulation may not exactly lead to the "chaos" envisaged in the trucking industry's submissions -- but it, in all probability, will lead to a restructured industry with the disappearance of some of the service characteristics of the current industry. (The evidence from Britain supports the

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\* Much of the "may well include" hinges on the definition and computation of marginal costs.



idea that under this structure TL rates would fall and LTL rates would increase.) On the other hand, continued entry regulation will protect both the industry and the shipper. The licensed trucking firm is similar to the public utility - once given an operating authority service is mandatory (serving any/all shippers) on a regular schedule along a licensed route.

This second option may not automatically mean there will be cross-subsidization, but it may mean different types of costs are relevant in rate-making decisions.

#### 4. EMPTY BACKHAULS

Empty miles has become a major issue as a result of the recent energy crisis, and has become part of the deregulation debate. The Organization of Independent Truckers is of the opinion that deregulation will result in fewer empty miles. They maintain that route and commodity restrictions encourage empty miles. However, they ignore the fact that there exists objective conditions for empty miles that no amount of deregulation can eliminate.

The major factor creating empty miles is the inherent trade imbalances between different areas. Other factors that produce empty miles are: (1) the specialized nature of certain trucks which limits the type of commodities they can haul; (2) the one-way flow of certain commodities in specialized trucks; (3) the high sanitary standards of certain commodities which require cleaning between hauls; (4) lack of planning and co-ordination on the part of carriers, and (5) restrictions on commodities hauled as a result of regulation.

Naturally, empty miles increase the cost of providing service and result in higher rates for the shipping public. Of the factors cited in empty mile creation, only lack of planning and co-ordination, and commodity restrictions represent economic inefficiencies. The other factors represent economic necessity.

The recent increase in the cost of fuel has resulted in carriers becoming more fuel conscious. Glengarry Transport Ltd. explicitly states the effort they have made in reducing empty miles in the past few years. As

empty miles have increasingly become more expensive to carriers there appears to be a generalized attempt to reduce this inefficiency. Carriers, over the past few years, have demonstrated their sensitivity to fuel prices.

Basically, empty miles are inherent in the trucking industry. Whether deregulation would reduce or increase empty miles is impossible to determine. If deregulation resulted in more trucks competing for the same market, then empty miles would probably increase. If deregulation resulted in fewer trucks (the trucks of the most efficient firms) carrying the same traffic, empty miles would probably decrease. Given a similar industry size, deregulation by eliminating route and commodity restrictions would probably lead to a small decrease in empty miles. However, nothing will eliminate those empty miles which are an objective necessity.

## 5. ECONOMIC AFFECTS OF RECIPROCITY

The briefs that address the topic of licensing reciprocity (plate fees) are in general agreement that extension of reciprocal agreements by Ontario would be beneficial to the Ontario Trucking industry. A most favoured solution is some type of overall agreement between all the Canadian provinces and all the American states. However, until such an agreement is reached, the Ontario Trucking Association, the Canadian Industrial Traffic League, Ryder Truck Rental, Joseph Kanuka and the Michigan Highway Reciprocity Board all urge the Ontario government to enter reciprocal agreements.

The Michigan Highway Reciprocity Board urges the granting of full vehicle registration reciprocity between the two jurisdictions. A Michigan survey was conducted in April 1974, the results indicated that a greater percentage of commercial vehicles with Ontario registration moved between the two jurisdictions at the various location studied. From the evidence of the Michigan study, full reciprocity would be more advantageous to Ontario truckers than Michigan truckers.

The Ontario Trucking Association indicates that reciprocal agreements will result in Ontario Truckers becoming more competitive. Quebec and Manitoba truckers, due to reciprocal agreements that each of their provinces has respectively entered with the United States, are able to move goods to distant points without incurring further commercial plate registrations. Ontario carriers must buy plates in other jurisdictions and this cost is reflected in higher rates.

The Ontario Trucking Association and Ryder Truck Rental urge Ontario to enter vehicle licensing prorating agreements. Under this type of reciprocity, the home jurisdiction issues licences to its own truckers. The cost would be the normal licence fee less the percentage of miles that the truck operates in other jurisdictions. To each of the other jurisdictions the truck owner would pay their normal licence charge less the percentage of miles the truck operates in other jurisdictions. Thus, an Ontario trucker operating ninety percent of his miles in Ontario and ten percent of his miles in Quebec, would be charged ninety percent of the normal Ontario licensing charge and ten percent of the normal Quebec licensing charge.

The various briefs favour the continuation of fuel and sales tax payments by truck owners to other jurisdictions which they operate in and vice versa for non-provincial owners operating in Ontario.

The justification for the continuation of these taxes is that out of province users must make some contribution to the cost of public highways. However, the Ontario Trucking Association, the Canadian Trucking Association and Glengarry Transport Ltd. all urge inter-provincial agreements which would eliminate the payment of duplicate fuel taxes. Such an arrangement presently exists for sales taxes. The Ontario Trucking Association favours the extension of sales tax arrangements to the United States.

The absence of reciprocal agreements has led to economic inefficiencies in the trucking industry. If an Ontario truck owner operates in two jurisdictions double licensing results in higher rates. If a truck owner refuses to pay the extra cost of registration and operates only in Ontario when his deliveries would normally take him out of the province, he



encounters the added costs of border interchanges. Reciprocal agreements would allow lower costs and better service in the trucking industry, and curtail certain impediments to growth in the industry.

The predominant fear of governments is that reciprocity would result in decreased revenue. However, growth in the industry resulting from reciprocity may increase registration taxes, sales taxes, fuel taxes and income taxes. Increased revenues in these areas may act in a balancing manner to total revenues.

6. THE ECONOMICS OF (a) PRIVATE TRUCKING (b) LEASING (c) BROKER DRIVERS  
FOR THE FIRM AND IN THE AGGREGATE

(a) Private Trucking

There is very little to address on the question of private carriage. Not one brief denies that it is an inherent right of shippers to carry their own goods. The only controversial question is whether private carriage should be allowed to extend to affiliates. The Ontario members of the Meat Packing Council, the Canadian Manufacturer's Association, and the Canadian Industrial Traffic League support legislation extending private carriage.

The one comment in the submissions on the economics of private trucking is the OIT's claim (quoting McLachlin) that there is a higher degree of excess capacity with private trucking than with for-hire trucking.

(b) Leasing

The "economics" of leasing, as the OTA's submission points out, are that leasing avoids tying up capital and that leasing reduces wasteful capacity. This position is not disputed, and the casual observer of the trucking industry could not help but conclude that there are some economic advantages to leasing given the growth in this field over the past decade.\*

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\* For example, although somewhat dated, a comment by Mr. Lawrie and A. Bailey in a 1973 article in Truck Canada puts some perspective on the extent to which leasing has become increasingly popular. "Of Canada's 1 1/2 million truck population, 805,000 were purchased within the last five years. And its calculated that of the latter figure, 62,000 units were put on a lease basis."

(c) Broker Drivers

No real information is contained in any of the submissions on the economics of brokers or owner/operators.\*

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\* This is not to suggest that no mention is made of brokers. Thibodeau-Finch, the OTA, and the Teamsters Joint Council #52 are examples of those briefs that refer to brokers. However, the economic aspects are not addressed.

## 7. SUPPLY AND DEMAND

Market equilibrium occurs at a price where the quantities supplied and demanded are equal. At any price lower than the equilibrium intersection of the supply and demand curves, the quantity buyers will want to purchase will exceed the quantity producers will supply; this will result in higher prices. The theory works in reverse if a price higher than equilibrium exists.

The economist's curves of supply and demand are an idealization of market mechanisms. They do not provide an exact microcosmic description of the market; in reality exact equilibrium is almost an impossibility.

The cyclical nature of the for-hire trucking industry reduces the odds of attaining equilibrium. In peak season under-capacity is often experienced. The Hearst Lumberman's Association complains of this problem. In the slack season over-capacity is experienced. MacKinnon Transport Ltd. cites the large number of empty backhauls they have experienced in the lumber district.

Although regulation has not resulted in equilibrium it has aided short term stability. Deregulation of entry would not produce equilibrium for the reasons already stated. In the long term, if the experience from other countries is any guide, it would appear that equilibrium to the extent that it is present in a regulated industry may also occur in a deregulated industry. However, in the short term it seems fairly clear that deregulation would result in a fairly high degree of instability. New entrants to the industry would create situations of over-supply. Some firms presumably

would disappear; and, in some local situations (small communities, small shippers) a condition of under capacity may even exist for a period of time until rates had adjusted to the new factors. It should be noted that if deregulation results in instability, social costs are incurred as firms go bankrupt and leave the industry.



## 8. ECONOMIES OF SERVING SMALL CENTRES

Unprofitable routes do exist: they are primarily those routes that transport to remote centres. Basically, the reasons for unprofitable routes is that tariffs do not adequately reflect costs of service. Glengarry Transport Limited supply an excellent example of this problem:

"Minimum charges according to Tariffs range between \$12.00 and \$14.00 but every carrier will prove that it is costing approximately \$17.00 to handle a single, minimum shipment from door to door."

This is a prime example of revenues not covering costs. Remote areas, for reasons previously stated, are more costly to service than main centres. At present, shippers with low costs of service subsidize those with high costs of service. It is the existence of this subsidization that results in the present servicing of small centres. Subsidization leads to distortion in the for-hire carrier industry; this means that unless deregulation is accompanied by drastic tariff changes, small communities will not be served. Our position has previously been stated: we recommend tariffs that reflect costs of service.

### ● Freight Pooling

Given deregulation, small centres probably would place more emphasis on freight pooling. Freight pooling certainly represents a valuable service to these areas. It allows small shippers to move their goods at reasonable costs without relying on subsidization from large shippers or society in general. It also conserves scarce economic resources such as fuel.

- Shipper Education

Shipper education obviously would be advantageous. Increased knowledge of the trucking industry would allow a shipper to choose the most dependable, efficient and inexpensive means of transport. Greater awareness on the part of shippers would force trucking firms to maintain a high quality of service and low rates to remain competitive.

## 9. THE POTENTIAL OF INTERMODAL MOVEMENTS

In general, the briefs have very little to contribute on this issue. There are only two direct mentions of this subject. Hearst Lumbermen's Association notes;

"With some mills located more advantageously to markets (especially mills located in the Quebec Abitibi area) who offer almost exclusive truck delivery to their customers, who are relatively the same as ours, it is gradually forcing the Northern Ontario sawmills to sell their lumber, delivered by truck in order to retain any business."

Glengarry Transport Ltd., expresses the view that deregulation would result in railway express, currently carried almost exclusively by PCV authorities, being moved instead by railway companies.

## 10. LABOUR IN THE MOTOR CARRIER INDUSTRY

According to the Ontario Trucking Association, most licensed carriers employ union labour whereas illegal truckers do not. Although we have no data available to substantiate this assumption, the other briefs tend to corroborate this statement. Many of the briefs submitted by individual for-hire carriers attribute a portion of their higher costs to the fact that the labour they employ is organized.

Union wages and fringe benefits to drivers and other staff certainly must impose high costs on regulated firms. However, the briefs indicate that the advantages outweigh the higher costs. Thibodeau-Finch Express Ltd. has found that union personnel can be controlled better than non-union personnel in the areas of absenteeism, hours on duty, highway speed and accident frequency. Although union wages and fringes amount to forty-eight percent of their total costs, Thibodeau-Finch Express maintain that this cost is necessary to attract the quality of people that conform to their rigid requirements.

Glengarry Transport Ltd. also considers union labour to be extremely valuable. They maintain that the growth of their company is due to the loyalty and efficient service of their union personnel.

On the question of safety, it appears that the licensed carriers have a better record than the illegal truckers. This is primarily because they employ organized labour. The Teamster brief indicates some of the unsafe practices they have encountered in the illegal trucking sector: (1) very long driver hours; (2) poorly serviced vehicles; (3) disregard of legal maximum load requirements.

Those truckers that employ union labour are subject to collective bargaining agreements which prohibit unsafe practices. The Teamster collective agreements contain extensive provisions on equipment, medical examinations, safety, employee conduct and behaviour, and driving behaviour.

To eliminate the safety disparities between those trucking firms subject to collective agreements and those not, the government must introduce legislation. Equipment and driver safety legislation in the trucking industry must become part of provincial law. A step in this direction would greatly decrease the number of accidents on Ontario highways.

A by-product of this legislation would be the decrease in cost disparities between the PCV authorities and the "illegal" sector. Deregulation coupled with safety legislation, would not result in safe firms reducing their standards to remain competitive, but would result in unsafe truckers increasing their costs in order to meet legislative requirements.

There is very little to say on wage disparity between the organized and the unorganized sectors of the trucking industry. Many other industries are subject to the same dilemma. However, paying higher wages does not necessarily result in a competitive loss for a firm. Often the increased productivity of a good worker attracted by high wages more than offsets the additional costs that the firm encounters.



APPENDIX - G

## Summary and Basic Approach

By D.W. Gillen, PhD, Assistant Professor of Economics,  
University of Alberta, November 10, 1976.

The following document contains an Overview of the economic issues as outlined by the Committee as well as separate comments and discussions of each of the submitted briefs.

In analyzing the briefs, I have attempted to stay away from arguing specifics, preferring rather to argue on the basic issues and relating specific statements in the briefs to the fundamental economics of the problem. A number of the arguments and discussions in the separate briefs should be considered in conjunction with the issues raised and discussed in the Overview. I have attempted to cross reference as much as possible but time was limited. Basically then, all discussion in the separate briefs should be considered as part of the discussion on the Overview, under their respective headings.

After a thorough analysis, I have concluded that neither service quality maintenance nor back-haul phenomena nor safety nor bankruptcies are necessary or sufficient condition for the regulation of the trucking industry. The non-economic basis of cross-subsidization can only be construed to be a justification for regulation if the same objective cannot be achieved via some less costly mechanism. There is virtually no evidence on this latter point.

Given the overwhelming economic evidence that regulation imposes many types of high costs on the society, one can only conclude that deregulation should take place.

A possible argument for temporary maintenance of regulation is that there does not exist empirical evidence of the costs in the specific case of Ontario. Ontario does not differ sufficiently from other jurisdiction to think that the evidence I have presented concerning the cost of regulation would not hold. If the Committee did reason in this way, it would be incumbent on the Committee to establish a study which would in fact set out to measure these costs. Only then could a just decision be reached regarding the appropriate form, if any, of regulation in the Ontario Trucking Industry.

## An Overview of the Economic Issues

### Section 1: Control of Entry Through Regulation

Regulation, in the form of entry, imposes artificial restrictions on competitive markets or seeks to supplant the market process. However, the decision to regulate, save that of public utilities, rarely represents a clear break with competition (see for example the OTA submission who suggest entry is in fact rather free, and rate setting is not formally regulated). Entry is a form of regulation which impedes the free flow of resources into or out of a market (or industry) for the avowed purpose of maintaining a satisfactory quality of service (Kahn, 1971); this includes frequency of service, safety and standards to all individuals, firms or areas, (Purdy, 1972). Furthermore, the geographic and political structures of Canada have significantly influenced regulation in the Canadian trucking industry. Since jurisdiction over trucking was passed to the provinces in the Motor Vehicle Transport Act of 1954, a fragmentation of regulation developed which may have prompted provinces bordering on regulating provinces to enact legislation for self-protection, or to purportedly protect the industry from ruinous competition. An additional rationale arose from Part Three of The National Transportation Act, in which trucking is to serve a role in restructuring the competitive conditions of inter-city transport.

The rationale for introducing regulation into the trucking industry rests upon the assumptions that: large economies of scale are present; and/or competition tends to be excessively

intense and the quality of service, therefore, has to be protected by the imposition of government restraints. As Mohring (1976) and Bernstein et al (1965) indicate, the trucking industry is very much subject to constant returns to scale; the first assumption is therefore not met. The second assumption suggests that without regulation a monopoly will develop and exploit shippers and the consuming public. One can argue that to create a monopoly there must be some form of barrier to entry in the form of absolute cost advantages, high ratio of fixed to variable costs, or indivisibility or immobile capacity between alternative uses. Virtually none of these characterize the unregulated trucking industry. (See further arguments, particularly in comments on briefs submitted by licensed carriers.) Indeed, in trucking entry is quite free (see for example the case of the U.S. and Australian conditions described in Kahn, 1971; and Joy, 1964). The second assumption is not valid. The third assumption relates to destructive competition. Competition can be excessive only if fixed cost is a large percentage of total cost and there are long sustained and recurrent periods of excess capacity. These conditions refer to a situation in which firms may find themselves operating at a loss for extended periods because marginal cost lies below average cost and insufficient capacity exists or cannot be created to meet market demand. (See comments on brief submitted by Hearst Lumberman's Association.) The result is that price falls as producers bid for the customers. The question is, does this situation apply to the trucking industry? As

Kahn (1971) points out, "Does trucking have the economic attributes of an industry subject to destructive competition? It would be difficult to find one less qualified" since variable costs are a high proportion of total cost (see OTA submission, Appendix Five), and trucks pay for way only as they use it (in the form of excise taxes on fuel, tolls and licenses). Moreover, the initial investment in trucking is relatively small (thereby facilitating increments in small amounts), shortlived which makes it relatively easy to switch technologies and there is less likelihood of losing a competitive advantage from obsolete capital, and mobile; used secondhand markets reduce the expected losses if one leaves the industry. Further evidence of Kahn's analysis is found in Pegrum (1973). (Further discussion available in other briefs.)

A source often asserted as a cause of destructive competition in trucking is the prevalence of joint costs (see the OTA submission on this issue and the issue of cream-skimming and my analysis of it). Joint costs arise from the fixed proportions nature of the provision of trucking services in one direction. The argument often cited is that since the marginal cost of the return haul is close to zero (see Mohring, 1976; Kahn, 1971), rates on the back-haul will tend to be driven toward zero. This situation is the case of a joint product for which there is a determinant competitive solution to the prices of these two joint services; where the two prices settle - how the joint costs between fore-haul and back-haul



are distributed - depend on the relative intensity (levels) and the elasticities of the two demands. The equilibrium prices will be equal to the marginal opportunity costs of the two products. If revenues are less than costs, capacity is too great than the combined demands for the joint services justify.

The critical consideration concerning the feasibility of competition is the elasticity of supply. To stifle this competition is to induce excess capacity and therefore resource waste and induce shippers and trucking firms to select locations on false signals or prices; that is, regulation may not only induce inefficiency, it may also magnify the problem. (See comments on effects in economic development in analysis of CTA and ONTC briefs.)

The final question to address is, would quality standards deteriorate (as the OTA claims in its submission as do other submissions)? The evidence presented in Kahn (1971), Nelson (1965) and Joy (1964) indicates that the answer is no.

Under what conditions then should regulation be sustained? The answer seems to depend solely on non-economic criteria. The first condition being that trucking firms are somehow privileged and therefore should be protected from competition at any cost. The second is that some areas, shippers or markets may not be served under competitive circumstances because it is not economic; that is, costs exceed the price which these shippers are willing to pay.

In this situation, government may wish to cross-subsidize (redistribute income by way of a form of excise tax) by protecting trucking and forcing them to participate in a common carrier role; the trucking firms would then skim-cream from the lucrative markets to subsidize their operation in the less remunerative areas. But this is not the only means of providing these markets with trucking services - for example, one could use a straight subsidy. The real question is, are there more economic and equitable means of achieving the non-economic goals?

Finally, if externalities arise, for example, in the case of transportation of hazardous materials, regulation may be a means of forcing internalization of the externality.

From the above discussion, it does not necessarily follow that direct restraints on entry and price are the proper remedy. Legally prescribed quality standards (such as under the Combines Investigation Act) could provide consumers with protection without the suppression of competition. However, the suppression of competition may make enforcement easier because: enforcement is easier the fewer the number of firms; entry controls increase the monopoly rent to any licenses thereby increasing the costs to license holders of failure to perform adequately; because there are monopoly rents attached to licenses, agencies can force carriers to assume financially burdensome obligations such as servicing unremunerative markets (this is a point the OTA could have prescribed but did not in their submission); and finally, if the information

transfer of service quality to consumers is met, it may prevent deterioration of performance and induce firms to take a larger view of its profit increasing activities.

Arguments for the removal of entry controls rest on the cost which they impose on the economy in general, and shippers and consumers in particular.

The only economic conditions which would suggest entry control are natural monopoly conditions (that is, continuously increasing returns to scale over the relevant range of output); indivisibilities or lumpiness in the capital or capacity required to produce; and externalities in production. The first two of these do not characterize the trucking industry (see discussion above and discussion in the OTA submission) and the third may well be handled in some other way such as by strict standards or under the Combines Investigation Act.

The principal arguments against entry or regulation in general are, (i) it induces inefficiency in the allocation of resources both within the trucking industry and in the output and location decisions of consumers (Stigler, 1971; NBER, 1965; Joy, 1964), (ii) it artificially raises rates to consumers (Sloss, 1970 and 1976, has calculated this cost to be approximately 16 million dollars annually for Canada and approximately 348 million dollars for common carriers in the U.S.), (iii) regulation gives rise to inefficiency by preventing the flexible response of price to temporary or local discrepancies between demand and supply, (iv) regulation has the almost

universal tendency to inflate costs (Kahn, 1971; Farmer, 1964; NBER, 1965).

These costs may be a small price to pay if the restraints of competition were necessary to prevent destructive competition and a severe deterioration in the quality of service. However, there has been considerable experience with exempt carriage in the U.S. and complete deregulation in Australia; this experience casts considerable doubt on the reality of the dangers to freer competition in trucking. As Farmer (1965) indicates, competition produces lower rates, a large number of suppliers, a wider range of alternatives and more flexible services in capacity utilization. In addition, competition is compatible with efficiency, reasonable stability of rates and continuity of service.

Exemption of certain commodities, particularly agricultural produce, has been based on the argument, (Fulda, 1961) that farmers need flexible transportation services, speedy in the case of perishables and adaptable for seasonal peaks and not wholly predictable requirements. However, other shippers doubtless may have special needs. It is competition that provides this flexibility of adapting supply to demand and it is regulation that introduces inflexibilities.

## Section 2: Market Structure

Oligopoly refers to a market which is characterized by fewness of sellers and in which the price output policies of firms are interdependent. The crucial points to be examined here are: what the relevant market is, has regulation

induced an increase in concentration such that an oligopoly was created from a previously competitive situation, and can we in fact define a separate trucking industry due to the amount of inter-modal ownership in Canada?

The market structure and extent is normally defined by the elasticity of substitution between trucking services and alternative modes. Clearly, the market in trucking, in a static sense, is defined between city pairs (Scherer, 1971). In this case, the form of competition will depend upon the availability of alternative modes and potential entrants into the trucking industry by either new firms or private carriage. If regulation of entry occurs such that licenses are route and/or commodity specific, then the available substitutes (real and potential) are reduced and interdependence of price and output (capacity) is increased (since we observe a large number of mergers and licences selling at a premium; it suggests there are formidable barriers to entry). Note in this case, we have a regulatory induced oligopoly situation.

In a dynamic sense the trucking market cannot be characterized in terms of city pairs since rates will influence shippers, consumers and trucking firms location decisions. If these economic agents face false prices such as under regulation the market is distorted and again an oligopoly situation can arise.

Would an oligopoly be the natural market for trucking? For this to result there must be some entry barriers, but trucking seems to be void of any; the trucking industry



is characterized by a low ratio of fixed to total costs, infrastructure in the form of roads is provided by the government and is paid for as use is made of them. Trucks have a well established primary and secondary market which increases capacity flexibility in small increments or decrements, and enhances the mobility of capacity. There are clearly no barriers to entry save those artificially created by regulation. Under these circumstances the natural market condition is one of competition with large numbers of sellers (see evidence in Kahn, 1971; Joy, 1964; Jordan, 1972).

The interesting question of whether one can define a separate trucking industry in Canada arises due to the degree of inter-modal ownership. Unfortunately, it is impossible to answer this question or even measure the degree of concentration within the trucking sector with the available data. However, we have observed expansion of the railroads into trucking services and the consolidation of a number of large trucking firms into a single firm (Purdy, 1972).

Information transfer among shippers and between carriers and shippers seems to be quite good. The rate filing bureau certainly facilitates this exchange. Further, the existence of the day-to-day leasing arrangers suggests that information about lower rates is disseminated fairly efficiently; "most shippers who are in a position to do so vote with their feet". (Kahn, 1971) (See a more complete analysis of this issue in my discussion of the Rate Bureau Submissions.)

### Section 3: Rate Making

Trucking rates in the presence of regulation tend to be inflated; that is, above the level which would prevail without regulatory constraints (Sloss, 1970; Farmer, 1964; Palmer, 1973; Kahn, 1971). Rates therefore will not bear a one to one relationship with costs. If we examine the data appendix of Sloss (1971), the contribution of average length of haul, average net weight per load, average annual license cost and average annual wage per employee together account for approximately 55 per cent of the variation in rates per ton mile. This would suggest that although costs influence rates, the rates are not cost based. Clearly this area needs a good deal more information and data breakdown; the Canadian Transport Commission's questionnaire data of 1970 might provide a source of information which would permit a more detailed analysis of the effects of costs on rates per ton mile (or some other appropriate measure of output and sale).

The existence of the tariff bureau, and the thirty day filing requirements would have the effect of equalizing rates (which a number of briefs point out is the case in Ontario), since they facilitate information flows and lower information costs among shippers and between shippers and trucking firms (Palmer, 1974). For example, in the CITL brief (p.11), they state "although members did not advocate abolition of price bureaus, they felt that the tariff bureaus discourage independent filing and generally inhibit price competition

anyway is zero. This essentially means that if all costs where variable, say in direct proportion with mileage, the cost of the return haul is not in fact variable but sunk; that is, they have to be incurred whether or not the transportation services are performed. The characteristic which gives rise to this situation is that the unit of production (the round trip) is greater than the unit of sale (trip in one direction). The determinant solution to this problem - where the prices for the fore-haul and back-haul settle, or how joint costs are distributed - depends on the respective intensities and elasticities of the two demands. In equilibrium the sum of the prices would be equal to the sum of the marginal opportunity costs of the two products. If competition pushes aggregate revenues for the round trip below joint costs, it can only mean that the combined capacities are greater than the combined demands. The question is then, is capacity sufficiently flexible to adjust to the combined demands?

The ability of trucking capacity because of its comparatively short life and ability to increase or decrease its small increments assures the profitable adjustment of capacity. If rates on one leg of a journey fall, the trucks can vary its product mix by moving along alternative routes. However, if regulation affects licensing such that firms are restricted to particular routes and/or commodities, chronic excess capacity will be evident and destructive competition will develop. Note, however, that the back-haul problem can be readily solved by way of competition and capacity adjustment

within the motor carrier industry". However, the real question is not the equalization of rates but the level of the rates relative to the competitive level (see my analysis of uniform rates in the discussion of the various briefs). For this there seems to be little evidence, although the study by Sloss (1971) and others indicate rates in regulated markets tend to be above rates in unregulated markets. Indeed, the fact that some, specifically day-to-day leasers, can offer reduced rates suggests current rates to be above costs (that is, the competitive level; see the discussion of this issue under cream-skimming in the analysis of the OTA submission).

As has been indicated above, regulation may be justified (Purdy, 1972) in the case of desired internal subsidization for particular markets, shippers or areas if the benefits are deemed to outweigh the economic costs. Some interesting, if not conflicting evidence for Ontario in this issue is provided in Palmer (1974, footnote 6). He indicates that E. J. Shoniker, Chairman of the OHTB, "denied the existence of internal subsidization, arguing that prior to rate filing different rate structures resulted from geographic price discrimination. Despite this denial members of the industry revealed that the OHTB will sometimes grant a license for a profitable route if the applicant will agree to service an unprofitable route in addition". This same type of cross-subsidization occurs between LTL-TL if one considers that smaller shippers or areas are likely to have LTL lots. However, the evidence is not clear one way or the other (also the OTA



does not provide any evidence in its submission, and conflicting evidence is given in the industry submissions).

The final question dealing with rate making is, should there be regional differences in rates? This clearly makes no sense unless some criteria are established. If rates are to be cost-based, then clearly if it costs more to ship in one region or area than another, rates should reflect the cost difference. However, to the extent that trucking services are provided under conditions of joint production, the level of demand and the pressure of capacity would be reflected in differential rates (Kahn, 1971; Mohring, 1976). Alternatively, if rates are to be regulated, the rate differential will be purely discretionary on the part of the regulatory agency. The cost differential will reflect the extent to which one region is felt more deserving than another, how regions are to cross-subsidize other regions to meet the overall provision of transportation services, or how the burden of other non-economic goals are to be shared among the different regions, shippers and consumers.

#### Section 4. Empty Back-Haul

The assertion is often made that a possible source of destructive competition in trucking arises from the fact that the provision of capacity in one direction inescapably involves provision of similar capacity in fixed proportions, for the return haul; this is the existence of joint production. The marginal costs of the return haul if the trucks are going



(see Joy, 1964) and that regulation hinders this adjustment process. Secondly, if destructive competition occurs it is a function of regulation operating through the back-haul phenomena which induces excess capacity on the front-haul.

#### Section 5. Economic Effects of Reciprocity

Plate fees represent a fixed cost independent of output. Furthermore, research conducted by Sloss (1970, 1976) indicates that the rate per ton mile is influenced very little by this particular cost (the partial contribution to the coefficient of variation being .03%). One of the interesting questions in the Sloss and indeed the Palmer (1973) study, is the negative sign on a license fee variable when a priori one would expect it to be positive. One could explain this in either of two ways. First, the license represents a fixed threshold cost which must be incurred if one is to produce ton miles of trucking services; it is independent of output and cost per unit of output fall as output increases. If average revenue per ton mile is positively related to costs (which the studies indicate is true) and costs rise with output, thus the negative sign on fixed cost (license fee) is capturing the increased output effect. Secondly, one might reason in the following way: given one is going to produce ton miles of trucking services, how much you do produce depends on the type of truck which you buy. One faces a spectrum of licenses which represents higher levels of technology (small or large trucks, semis or pup

trailers etc.) and therefore lower costs. The negative sign between average revenue per ton-mile and the license fee is therefore capturing the lower costs associated with the higher technology. Either of these suggests that license fee can effectively be used to influence output and/or the level of the technology, and therefore capacity in the reciprocity agreement. Clearly either of these two variables will influence the degree of efficiency in competition.

Fuel tax and sales tax are variable costs. If reciprocity were to occur it may simply result in a redistribution of income. This results because variable costs will be influenced by the quality of roads or the level of technologies of the roads (see further discussion of this issue in my analysis of various briefs). Higher levels of technology or road standards would decrease variable costs. Thus less tax revenue is generated. Since Ontario has, on average, higher quality roads than other provinces, it may be a net loser in such an arrangement.

The effects of reciprocity on competition for both trucking firms and shippers are mixed. Clearly, reciprocity results in a larger market for both parties. However, there is also a net increase in the number of firms competing. If regulation is maintained differentially across provinces, the effect on the trucking industry may be determined by the province with the greater amount of regulation. Consider a Quebec-Ontario example: Quebec regulates entry and rates, and rates tend to be higher in Quebec. In the case of

reciprocity, Ontario trucks could enter the Quebec market and undercut Quebec truckers; a condition which would bring an outcry from the Quebec trucking industry. However, there seems to be a better case for expecting Ontario rates to gravitate up to the level of Quebec rates (or close to them). The net result is some increase in traffic but also an increase in rates which is for the most part, pure windfall. Income has then simply been redistributed to Ontario trucking firms.

The effect on shippers is difficult to determine. Clearly, if the above scenario results, Ontario shippers lose and ultimately Ontario consumers. The effect on location is indeterminant since it is not clear how much rates would have to change before relocation of either shippers or trucking firms would result.

A final question which must be addressed within reciprocity is the effects it will have for back-hauls. One could conclude from the discussion above that capacity will expand with reciprocity and therefore empty back-hauls will occur more frequently since the back-haul of an Ontario carrier will be the front haul of a Quebec carrier. If this results, some rationalization will have to take place. The net result will be a reduction in the number of firms in the Ontario trucking industry or an aggravation to the existing excess capacity in Ontario trucking.

Section 6. Economics of Private Trucking,  
Leasing and Brokers

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Private trucking, leasing and broker drivers represent alternative forms in which trucking services can be provided; that is, differential organization of the trucking firm. However, each has a differential effect on the level of competition or coordination (under a state of regulation) due to both the level of costs and the ratio of variable to total costs.

There are some (see OTA submission) who claim that private trucking presents a source of competition (real or potential) since a shipper can always provide his own trucking services. However, the conditions under which this would occur are limited. They would include production and distribution processes which are transportation intensive but in a short haul market (see Mohring, 1976), some degree of market power in the product market to ensure relative constant product demand (as an aside, it might be interesting to investigate the correlations between firms in highly concentrated industries and firms which own and operate their own trucks, casual empiricism suggests it may be large); and a product which may be perishable and not subject to inventories as with farm produce. If this form of trucking does offer a source of competition to the regulated carriers then, given other things, one should observe an inverse relation with its growth and the growth of fore-hire trucking if the latter has indeed increased service quality as it claims (see the OTA submission).

The leasing and broker drivers offer a source of trucking services to firms who are subject to infrequent or peak demands, a random distribution of demand over the market (such as for required with construction materials), or for firms whose markets may lay in small centers, or those who have a portion of their market in small centers which are not adequately serviced by fore-hire trucking. The fact that they exist and participate in the market suggests there is a strong demand for their services, a service which is different from the fore-hire trucking services.

There is also the claim that the broker drivers and leasing services offer unfair competition which results in bankruptcies in the fore-hire trucking sector. However, if one examines Table 15 in the OTA submission, one of the two notable causes of bankruptcies were, "overheads too high", which suggests regulation has led to excess capacity and lack of work - the high rates led to a decrease in demand and no doubt the higher rates being increased to cover the excess capacity costs.

The existence of the various forms of trucking firms may be the result of regulation. The test of this hypothesis is to examine the proportions of each type of organization in the regulated and unregulated provinces and observe their growth or demise over time with changes in service quality, rate adjustments and industrial base.



## Section 7. Equilibrium In The Trucking Services

Equilibrium is a position which is stable and the position gravitated to when a shock to the system occurs. Clearly if regulation exists there cannot be an equilibrium position in the above sense since regulation imposes artificial constraints on the market. Therefore, one may observe temporary stability in a market but this by no means an equilibrium position.

Evidence from Sloss (1970), Palmer (1973) and Farmer (1964) indicate regulation artificially increases rates and inflates costs. This latter problem is clearly evident in Table 15 of the Appendix of the OTA's submission and in the evidence of Nicholson (1958).

There has been ample opportunity to observe the wastes, inefficiencies, and monopolistic consequences of regulation. That the improvements in quality as it may today provide are not deemed sufficient to justify higher costs is strongly suggested by the general practice of shippers who have alternatives of dealing with non-regulated carriers. It is difficult for an economist to accept the notion that full cartelization of an industry is a necessary means of enforcing objective standards of safety and financial responsibility. The result of regulation is therefore a pseudo equilibrium.

What is inconceivable, given the basic economic characteristics of the industry is that deregulation would usher in a long period of chronic sickness. Or that firms capable of providing reliable, efficient, and diversified

service would be faced with the choice of either adulterating their product or going bankrupt. The industry simply lacks essential prerequisites of destructive competition. As indicated above in the discussion of rate making, the suggestion is made that an equilibrium of both price, output and capacity can result when competition takes place in the market.

#### Section 8. Economics of Serving Small Centres

Evidence on losing routes seems to be conflicting (see discussion above under rate making). However, one does observe differential rates between equidistant city pairs. This may reflect, as discussed above, joint costs associated with back-hauls or simply price discrimination.

The existence of losing routes can, as Kahn (1971) suggests, result from regulation. First, because entry controls create excess capacity and inflate other costs; secondly, because the mobility of capacity to meet demand is inhibited by regulation; and finally, because false prices generated by regulation have resulted in location decisions of firms into areas in which rates are lower due to the common carrier element of regulation.

Regulations introduce distortions differentially across the various regions in which there is somewhat freer competition of the more lucrative routes. Freeing the regulated carriers for more effective competition, rather than compounding distortions issuing from government

intervention by instituting yet another, would require loosening the numerous operating restrictions to which the carriers have been subjected.

In purely static terms it is a matter of indifference whether the government corrects for distortions introduced by a tax or subsidy (which, in effect, regulation does) in one place by introducing offsetting imperfections elsewhere, or by moving to eliminate the original distortion (this is clearly evident in the theory of second best).

However, as indicated above, the economist has to be faced with certain non-economic criteria for regulation. However, the economist may object to things like internal subsidization on the grounds that it imposes sacrifices on others greater than the benefits to the subsidized customers, shippers or regions; and that the poor would get more satisfaction, at less cost to the subsidizers if they were given direct money grants instead. What the economist must do then is to insist that regulators (i) satisfy themselves that these goals cannot be equally well achieved without the sacrifice of economic efficiency, (ii) explicitly confront the economic costs of achieving these other goals, in order to decide whether the benefits do indeed justify these costs (non-economic decisions that involve the expenditure of resources must be made as rationally as possible), (iii) openly decide who appropriately should bear the financial burden. An excellent demonstration of the welfare costs of cross-subsidization via rate setting (specifically

uniform rates which a number of briefs suggest to be the case) can be found in Kahn (1970, pp. 189-193).

Freight pooling may be a means of reducing losses but this is in effect simply a rationalization of capacity; a result which is clearly available by a competition. However if non-economic considerations prevail, the quality of service with freight pooling could decline since some accumulation must take place which could reduce the frequency of service and thereby decrease the competitive position of shippers or increase their costs from inventories. This may also induce increased capacity in warehousing and terminals. Finally, such an arrangement may induce increased regulation since freight pooling may result in the opportunity for collusion among trucking firms as well as a separate means of forestalling potential entrants (see Kahn, 1971, page 314-323 for a similar discussion concerning power pooling).

#### Section 9. Inter-Modal Movements

Inter-modal ownership is not permitted to any great extent in the U.S. while in Canada it is permitted if it will not undouly restrict competition or otherwise be prejudiced to the public interest (see Feltham, 1970). The argument for allowing inter-modal ownership is on efficiency grounds and induced innovation in developing multi-modal shipping techniques.

However, inter-company cooperation can secure many of the same benefits as financial integration. Common

ownership does have advantages of eliminating inter-firm negotiations and profit-splitting. However, it also carries with it the charges of placing competition, particularly non-integrated competition, at the disadvantage compared to affiliates of the integrated companies, reducing the intensity of competition and suppressing less capital intensive alternatives. The probability of inter-modal movements in Canada is therefore reduced since the railways are integrated and will adopt policies favourable to their affiliates.

Purdy (1972) examines integrated movements for both short-haul and long-haul operations. His basic conclusions are that profit seeking trucking firms could supply the necessary services rather than the rail-owned highway operations. Ordinary market competition would create whatever integration that best serve the shipper. From his analysis one can conclude that yes, there does seem to be real economic benefits from inter-modal movements, but no, you are not likely to see them with the degree of inter-modal ownership currently prevailing.

#### Section 10. Labour and the Motor Carrier Industry

Without a thorough study one cannot provide definitive statistics on the proportion of labour which is organized. However, if 6.9 per cent of trucking registrants are fore-hire and they produce 65.7% of the net ton miles (see the OTA submissions Appendix 3) this suggests that the degree of



labour organization is immaterial. A more important question is can labour working as a unit reap some of the monopoly rents resulting from regulation and normally appropriated by the trucking firms? Evidence in Sloss (1971), Palmer (1973) suggests that wages do not result in increases in rates per ton mile - rates are not significantly cost based - but that regulation does artificially increase rates per ton mile. For a discussion of the service and safety factor see my review of the OTA submission.

APPENDIX - H (in 3 Parts)

THE MOTOR CARRIER INDUSTRY:  
AN ANNOTATED BIBLIOGRAPHY

Prepared for

The Select Committee on  
Highway Transportation of Goods  
Legislative Assembly of Ontario

by

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October 12, 1976

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## INTRODUCTION

This bibliography was prepared according to a list of priorities established by the Select Committee and outlined in the table of contents in order of importance. With a few exceptions, the materials included cover the period from 1970 to date.

While the focus of the Select Committee rests on the intercity and interprovincial trucking industry in Ontario, it is apparent from the lack of literature on the Ontario industry that one must turn to other jurisdictions in Canada, and to the United States, in order to present a clear picture of the major issues. The reader will therefore note that many of the publications are American. Although the documents submitted to the Select Committee have not been included, they represent an important source of current information.

It should be noted that several of the publications in the Regulation/Deregulation category are general enough in nature to cover many of the topics listed in the table of contents. The category Urban Trucking is not annotated but remains as a guide to the type of research which has been carried out in this field, especially in Canada.

An asterisk (\*) to the left of an entry indicates that the particular publication was included on the basis of title, or abstract where found.

The following is a list of location symbols with the corresponding libraries or locations where most of the materials listed in the bibliography are held. Call numbers have also been provided.

Ad. St.	Administrative Studies Library, York University, Downsview, Ontario.
JPT	Joint Program in Transportation, University of Toronto/York University, Toronto.
MTC	Ontario Ministry of Transportation and Communications Library, Downsview, Ontario.

OTA	Ontario Trucking Association, Rexdale, Ontario.
Scott	Scott Library, York University, Downsview, Ontario.
TDA	Transportation Development Agency Library, Montreal.
U of T	John P. Robarts Research Library, University of Toronto, Toronto.
U of T Bus.	Management Studies Library, University of Toronto, Toronto.
U of T Eng.	Engineering Library, University of Toronto, Toronto.



# I. GENERAL

American Trucking Associations, Inc. The Operations Council. An Annotated Bibliography of the Motor Carrier Industry. Compiled by Bob J. Davis, Western Illinois University. Washington, D.C., 1976. 77 pages.

Requiring seven years of development, the bibliography lists over 1,000 books, periodicals, pamphlets, guides, programs, awards, and organizations in the motor carrier industry. Each item is classified in one of twelve areas: cargo security, education, highway, household goods carriers, interstate commerce law, labour, loss and damage, motor carriage, motor histories, motor pricing, private carriage and safety. The current listing is the first pertaining solely to trucking to be compiled in almost 20 years. (MTC 016.3883 Am35T 1976)

Currie, A.W. Canadian Transportation Economics. Rev. ed. Toronto: University of Toronto Press, 1967.

Two chapters concern trucking. "Highway Freight Transport" (pp. 438-473) covers the history of trucking in Canada, control of entry, rates, taxation of carriers, jurisdiction over trucking, and classes of operators. "Road-Rail Competition" (pp. 474-518) deals with the emergence of truck competition, costs and rates for road and rail, length of haul by both, piggyback, railway-owned trucks, and agreed charges. (U of T HE 215 C8 1967)

Dartnell, Albert L. The Transportation of Freight by Road in Canada. Ph.D. thesis, McGill University, 1967, cl968. 391 pages.

The thesis includes an economic analysis of railway competitive rates and their effect on road transport and an economic analysis of the demand for rail and truck transport. It assesses the effect of the National Transportation Act and federal labour legislation on road transport and examines the possible effect of technological and other changes on the industry. (Ad. St. HE 199 C3 D3 microfilm)

Farris, Martin T., and McElhiney, Paul T., eds. Modern Transportation: Selected Readings. 2d ed. Boston, Mass.: Houghton Mifflin, 1973. 466 pages.

The section on motor transportation includes such articles as "The Available Alternatives: Motor Carriers" by P. McElhiney and C.L. Hilton, "Rationale: the Regulation of Motor Carriers" by M. Farris, "Regulatory Requirements for Motor Transport" by D.R. Pegrum, and "The Case for Unregulated Truck Transportation" by R.N. Farmer. (Scott HE 203 F36 1973)

"Highway Transport in the 1970's: Problems and Prospects." Mid-Canada Transportation Scene: Commodity Movement; Proceedings of a Conference, Winnipeg, 1973. Winnipeg: Center for Transportation Studies, University of Manitoba, 1973. pp. 35-59.

This session of the conference contains four addresses dealing with regulation of the for-hire motor carrier industry, investment in highway transport, technological developments and operational problems, and the significance of highway transport on the prairies. (JPT)

House, R.K. and Associates, Ltd. Manitoba For-Hire Trucking Industry Productivity Study: General Industry Report. Prepared for Manitoba Dept. of Industry and Commerce and the Manitoba Trucking Association. Mississauga, Ont.: R.K. House and Associates, 1974. 205 pages.

"The thirteen chapters of the report outline three broad areas. Chapters one through four represent an analysis of the dimensions of the industry, including costs, revenues, fleets, employment, management problems and accounting practices. The second section (chapters 5 through 9) deals with regulatory matters and the impact of these regulations on the trucking industry. The final chapters (10 through 13) outline some specific problem areas affecting the daily operations of trucking companies in Manitoba and include a discussion of the role of the Manitoba Trucking Association." (OTA)

Kates, Peat, Marwick & Co. Trans-Newfoundland Corridor Transportation Study; Volume B: Trucking Industry. Ottawa: Canadian Transport Commission, 1974. 1 vol.

This study is based on interviews with public and private carriers, a questionnaire, and a survey of trucking activity on the Trans-Canada Highway during April 1973. The report covers historical development of the Newfoundland trucking industry, service demand, current industry facilities and operations, evaluation of performance, and regulation. Two additional volumes of the above study are noteworthy: Freight Transportation; Demand Characteristics and User Opinion (Volume G), and Corridor Transportation System; Present Performance and Prospective Improvements (Volume J). (JPT)

Ontario, Ministry of Transportation and Communications. Economic Policy Office. Truck Transportation in the Province of Ontario. Downsview, Ont., 1975. 3 vols.

Phase 1: Description of Operating and Administrative Characteristics. - Phase 2: Survey of Shippers. - Phase 3: An Analysis of the Basic Rate Structure. Phase 1 describes and explains "the various facets of the

trucking industry in terms of its operations, administration, organization and the legislation which governs it." Phase 2 defines "the role of common carrier trucking in terms of the overall physical distribution needs of Ontario shippers" and assesses "the degree to which the trucking industry is meeting these needs." Phase 2 includes an analysis of private trucking and determinants of modal choice. Phase 3 examines and compares the rates from the provinces of Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. (OTA)

Roads and Transportation Association of Canada. Annual Conference Proceedings; Volume 4: Goods Movement and Trucking Workshop, September 22-26, 1975, Calgary. Ottawa, 1975. 113 pages.

The five papers in this workshop are entitled "The Saskatchewan Common For-Hire Carrier Industry: a Rationalization Approach", "International Truck Movements in the Niagara-Lake Erie Area", "Mackenzie Highway-Water Freight Modal Split", "A Profile of Urban Goods Flow in Calgary", and "A Profile of Urban Trucking Activities and Their Impact on Air Pollution". (TDA HE 11 R62 1975 v.4)

Steeves, E.T. "Trucking in Canada 1957-1967." Paper presented at the Annual Meeting of Canadian Trucking Associations, June 25-27, 1969. Ottawa: Dominion Bureau of Statistics, 1969.

The paper presents an overview of the industry and is supported by a considerable amount of statistical data. Economic background, financial picture, ownership and labour, and the future of the industry are discussed. (MTC 388.324 S Files)

## II. REGULATION/DEREGULATION

Automotive Transport Association of Ontario. Memorandum on Lease Operations with Particular Reference to "Pseudo" Varieties and Some Recommendations for Solution of the Problem. Prepared for Consideration of the ATA Lease Committee by J.R. McLeod. Rexdale, Ont., March 1969. 29 pages plus tables.

The report deals with regulatory matters concerning leasing and includes tentative solutions and recommendations for amendments to the PCV Act. (OTA)

Barrett, Colin. "Deregulation: a Study in Illogic." ICC Practitioners' Journal, (November-December 1971), 8-18.

The author discusses the possible consequences of deregulation in terms of service and rates.

Canadian Trucking Association. Statement of Position on Transportation Policy. Ottawa, May 1976. 23 pages plus appendices.

This submission is CTA's appraisal of and comments on "Transportation Policy: a Framework for Transport in Canada" prepared by the Ministry of Transport in 1975. Additional comments on the role of the federal regulatory agency, the significance of service characteristics in transportation, and comparison of truck rates by region are included. (JPT)

Clayton, Alan M. "Truck Transport Regulation; Where Are We Going?" Roads and Transportation Association of Canada. Annual Conference Proceedings: Theme Sessions, September 22-26, 1975, Calgary. Ottawa, 1975. pp. 21-29.

The paper deals with the impact of regulation on the trucking industry. The author concludes that more attention should be paid to relating the performance characteristics of the industry to the objectives of a transport policy.

"Complexity of Truck Issues Has Humphries' Office Busy." Truck Canada, 22 (May 1974), 39, 48-49, 51, 53.

This is the text of a speech by an Ontario transport official regarding licence classification, safety, and the PCV Act.



Davis, Grant M., ed. Transportation Regulation: a Pragmatic Assessment. Danville, Ill.: The Interstate Printers & Publishers, Inc., 1976. 220 pages.

The book is a collection of important articles dealing with the domestic regulation of the American transportation industries. In general terms, the chapters cover the U.S. transportation network and the common carrier system, institutions involved in transportation regulation, regulatory issues, and recommendations for improving regulatory laws.

Davis, G.M., and Rosenberg, L.J. "Physical Distribution and the Regulatory Constraint: an Analysis." Transportation Journal, 15 (Spring 1976), 87-92.

The results of a short survey on regulatory issues (rate bureaux, control of entry, etc.) are presented.

"Deregulation, Reregulation or Status Quo?" Distribution Worldwide, 74 (September 1975), 31-38.

This is a collection of opinions of eight leaders in the transportation industry including four motor carrier executives and three shippers.

Feltham, Ivan R. "Common Ownership in Canada with Particular Reference to Regulation of Acquisition of Motor Carriers." Transportation Law Journal, 2 (July 1970), 113-135.

The article points out that neither provincial nor federal laws distinguish between various types of mergers and that common ownership is prevalent in Canadian transportation.

Fleming, W.R. "The Issue is Larger Than Trucks." Truck Canada, 21 (November 1973), 25, 63, 65, 67, 69.

An address in which the author asks for support in the battle against over-legislation of the trucking industry.

Flott, A.C. "The Case Against the Case Against Regulation." ICC Practitioners' Journal, (March-April 1973), 281-290.

" . . . This article examines the principal arguments that have been made by those who advocate deregulation as well as the factual bases for such arguments . . . ." The author indicates that the case for deregulation is based on faulty premises.



Friedlaender, Ann F. The Dilemma of Freight Transport Regulation.  
Washington, D.C.: The Brookings Institution, 1969. 216 pages.

This is a general approach to freight transportation and includes the rationale of regulation, supply and demand in transportation services, consequences of current regulatory policies and alternatives to present policies, and the common carrier.  
(MTC 385.264 F913 1969)

- \* Glaskowsky, Nicholas A. Jr.; O'Neil, Brian F.; and Hudson, Donald R. Motor Carrier Regulation: a Review and Evaluation of Three Major Current Regulatory Issues Relating to the Interstate Common Carrier Trucking Industry. Washington, D.C.: ATA Foundation, Inc., 1976. 90 pages.

The report deals with control of entry into common carriage, history of rate-making citing various relevant acts, and collective rate-making and rate bureaux. A review of this report appears in Traffic World, August 30, 1976, page 1.

Heads, John. "Some Lessons from Transport Deregulation in Canada." Paper presented to the Transportation Research Forum, October 10-12, 1974, San Francisco, Calif. Ottawa: Canadian Transport Commission, 1975. 21 pages.

"Transport deregulation does not necessarily solve the financial problems of carriers and, from the standpoint of economic theory, transport deregulation does not necessarily produce an optimal allocation of resources." (JPT)

Hirschbach, G.L. "Public Convenience and Necessity in Federal Motor Common Carrier Cases: What Are the Criteria?" South Dakota Law Review, 16 (Spring 1971), 351-381.

The author points out that the term "public convenience and necessity" has not been clearly defined by the Interstate Commerce Commission. Granting of licences by the ICC is discussed.

Hynes, C. "Small Business and Deregulation of the Motor Common Carriers." Transportation Journal, 15 (Spring 1976), 74-86.

The article points out the dangers of complete deregulation to small businesses in urban and rural areas. It is feared that these businesses will suffer from lack of transportation services as carriers will want to serve the most economically advantageous regions.

Johnson, James C. "An Analysis of the ICC's Administration of Section 5 Trucking Mergers." Transportation Research Forum. Proceedings of the 14th Annual Meeting, October 15-17, 1973, Cleveland, Ohio. Oxford, Ind.: Richard B. Cross Company, 1973. pp. 773-793.

The paper discusses "increased concentration in the trucking industry and its ramifications, consistency of the ICC in Section 5 trucking consolidation cases, the ICC's overall merger policy, and whether the ICC protects the status quo in trucking merger cases at the expense of economic efficiency." (JPT)

Johnson, James C. "Deregulation of Transportation: Its Probable Ramifications." Transportation Research Forum. Proceedings of the 15th Annual Meeting, October 10-12, 1974, San Francisco, Calif. Oxford, Ind.: Richard B. Cross Company, 1974. pp. 133-137.

The paper deals with two aspects of deregulation: decrease in federal entry control and the pricing for transport services. (JPT)

Johnson, James C. Trucking Mergers: a Regulatory Viewpoint. Lexington, Mass.: D.C. Heath and Company, 1973. 237 pages.

The book covers characteristics of the motor trucking industry, development of economic regulation, basic issues in trucking unifications, and the role of the Interstate Commerce Commission in trucking mergers. (U of T KF 2265 J6)

LeBlanc, M.R. "Economic Regulations and the Motor Carrier Industry in Canada." Selected Papers from the Transportation Seminar Series. Fredericton, N.B.: Dept. of Civil Engineering, University of New Brunswick, 1973. 8 pages.

This paper discusses various aspects of regulation in the trucking industry. It presents a rationale for regulation and observations concerning the effect of regulation on prices, costs and profits of the industry, and control of entry to the industry. (JPT)

Levine, H.A., and Wang, N.C. "Motor Carrier Financing and Earnings Regulation: the Other Side of the Coin." ICC Practitioners' Journal, (November-December 1974), 26-41.

The article concerns the question of "reasonableness" of motor carriage earnings and suggests a policy for controlling these earnings.

Lieb, R.C. "Relaxing Motor Carrier Regulation: the Massachusetts Attempt." Logistics and Transportation Review, v. 11, no. 2 (1975), 193-201.

The paper traces the legislative attempt to reduce controls on trucking in Massachusetts. The author indicates that massive changes could pose greater problems than expected.

McAdams, Alan K. "Do We Know What to Expect from Relaxation of Regulation of Surface Transportation." Transportation Research Forum. Proceedings of the 14th Annual Meeting, October 15-17, 1973, Cleveland, Ohio. Oxford, Ind.: Richard B. Cross Company, 1973. pp. 293-300.

The article concerns relaxation of rail and truck regulation and tests the proposition that relaxing regulations would lead to a more efficient system. Experiences in Canada, Great Britain and Australia are cited. (JPT)

McLachlan, D.L. "Canadian Trucking Regulations." Logistics and Transportation Review, v. 8, no. 1 (1972), 59-81.

The article discusses economic regulation of trucking in Canada, regulatory bodies and the effects of economic regulation on both private and for-hire carriage.

Menzies (M.W.) Group Limited. Canadian Transportation Services Division. "Part III": an Appriaisal of the Potential Impact to Ontario from the Implementation of Part III of the National Transportation Act. Downsview, Ont.: Dept. of Transportation and Communications, 1972. 2 vols.

Volume one presents the growth of highway transportation, economic impact of motor carriers, regulation of motor carriers with reference to Canada, the U.S. and Great Britain, the role of motor carriers in Ontario, specific regulatory issues (i.e. control of entry, rate regulation, licensing practices in Ontario), and implementation of Part III of the National Transportation Act. Volume two is entitled "Quantitative Support Material". (MTC 380.511 M529)

Moore, Thomas Gale. Freight Transportation Regulation, Surface Freight and the Interstate Commerce Commission. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1972. 98 pages.

This paper is "confined to the regulation of surface freight transportation with the exception of pipeline carriage . . . " and covers the background of regulation, the Interstate Commerce

Act, the development of multi-modal regulation, regulatory practices (i.e. entry, rates, service, mergers), effects of regulation (i.e. prices, service, market share, cost to the economy), and alternatives to regulation. (U of T KF 2190 Z9M66)

Nelson, J.R. "Motor Carrier Regulation and the Financing of the Industry." ICC Practitioners' Journal, (May-June 1974), 436-457.

The article discusses control of entry, rates, and the effect of regulation on business risks in the industry.

Norton, M.J. "The Interstate Commerce Commission and the Motor Carrier Industry: Examining the Trend Toward Deregulation." Utah Law Review, 1975, (Fall 1975), 709-725.

The article analyzes the issues behind the trend toward deregulation, including rates, costs, and the proposed Department of Transportation bill.

Palmer, John. "Taxation by Regulation? the Experience of Ontario Trucking Regulation." Logistics and Transportation Review, v. 10, no. 3 (1974), 207-212.

"This paper analyzes the regulation of the for-hire trucking industry in Ontario with respect to [Richard] Posner's criteria for taxation by regulation, concluding that it has been, at best, only partially successful. Part I provides some historical background of the Ontario Highway Transport Board and discusses in general terms its regulatory policies. In Part II these policies are directly related to the concept of taxation by regulation. . . ."

Quick, Don. "Illegal Trucking." Truck Canada, 24 (March 1976), 8-11.

Aspects of illegal trucking are discussed from the point of view of the Ontario Trucking Association. The article includes proposed legislative changes to the PCV Act.

Purdy, H.L. Transport in Canada: Competition and Public Policy. Vancouver: University of British Columbia Press, 1972. 327 pages.

Although the book deals with the various modes of transport, there is considerable material on the regulatory issues in the trucking industry. (U of T HE 215 P8)



Reimer, Don. "The Role of Government in Transportation." Truck Canada, 24 (March 1976), 19-22.

In this address to the CITL conference, the author discusses the various levels of government involvement in the trucking industry.

Schultz, Richard. "Intergovernmental Cooperation in Transportation: the Case of the Extra-Provincial Motor Carrier Industry in Canada." Paper presented to the Joint Session of the Transportation Research Forum and the Canadian Transportation Research Forum, November 4, 1975, Toronto. 49 pages.

The paper deals with "some of the special problems in transportation policy-making that develop as a result of the division of authority that exists between the federal and provincial governments. The discussion will be based on an analysis of the intergovernmental negotiations from 1967 to 1972 on the implementation of Part III of the National Transportation Act of 1967 that called for federal regulation of the extra-provincial motor carrier industry. . . ." (JPT)

Seip, D.W. "Deregulation Threatens Canadian Trucking Industry." Canadian Transportation and Distribution Management, 78 (January 1975), 18-19.

Deregulation as it would affect Ontario is discussed.

Smith, Jay A. Jr. "Concentration in the Regulated Motor Carrier Industry." Transportation Research Forum. Proceedings of the 13th Annual Meeting, November 8-10, 1972, Denver, Colo. Oxford, Ind.: Richard B. Cross Company, 1972. pp. 189-217.

The paper seeks "to identify the links between structure, behaviour, and performance and shall specifically examine the connections between structure and performance in the regulated intercity motor transportation industry. . . ." (JPT)

"Some Solutions to the PCV Puzzle." Canadian Transportation and Distribution Management, 76 (January 1973), 22-23, 25-26.

Solutions to the questions of regulation of private carriage, freight forwarders, trailers in international traffic, and rate control and supervision are presented.



Spychalski, John C. "Criticism of Regulated Freight Transport: Do Economists' Perceptions Conform with Institutional Realities?" Transportation Journal, 14 (Spring 1975), 5-17.

The author states that several of the proponents of deregulation have given questionable arguments. The paper deals with motor and rail services and covers conditions affecting motor freight competition, possible consequences of "free" rate competition, collective rate-making and oligopsony and monopsony in freight transport markets.

Stevenson & Kellogg, Ltd. A Study of Cartage and Intercity Trucking Regulations: Phase I. Downsview, Ont.: Ministry of Transportation and Communications, June 1975. 1 vol.

The study covers a description of the trucking industry, alternative regulatory systems, local cartage licensing and regulations, jurisdiction over intra-regional trucking, and extension of urban boundaries.

Wahl, Karl N. "A Highway Carrier's View of National Transportation Policy." Truck Canada, 23 (April 1975), 18-20, 22.

In his address to the Toronto Branch, CITL Annual Meeting, the author discusses the regulatory role, truck-rail competition, and suggests ways to improve the regulation of trucking.

Wilson, G.W. "Regulation, Public Policy, and Efficient Provision of Freight Transportation." Transportation Journal, 15 (Fall 1975), 5-20.

The article discusses the "economic effects of existing transport regulation" and "the needed changes indicated from an appraisal of such effects." It covers the static theories of regulated competition and regulated oligopoly, ICC regulatory policy, effects of entry control, costs of regulation, impact of non-regulatory public policy, and efficient rate structure.

Wyckoff, D. Daryl. "Factors Promoting Concentration of Motor Carriers Under Deregulation." Transportation Research Forum. Proceedings of the 15th Annual Meeting, October 10-12, 1974, San Francisco, Calif. Oxford, Ind.: Richard B. Cross Company, 1974. pp. 1-6.

The paper deals with the notion that "deregulation will lead to concentration of the less-than-truckload segment of the for-hire motor carrier industry in the United States. . . ." (JPR)

Zimmerman, R.J. "Deregulation Will Hurt Small Firms . . . Will Result From Failure to Control Entry." Truck Canada, 23 (June 1975), 11-13.

The article discusses the effects of deregulation on service, safety and rates.

### III. STRUCTURE OF THE MOTOR CARRIER INDUSTRY

American Trucking Associations, Inc. American Trucking Trends. Washington, D.C. Annual.

This annual publication represents a round-up of trucking statistics on ton-miles, tonnage, products, revenues and costs, taxes, manpower, equipment and innovations.

Annable, James E. "The ICC, the IBT, and the Cartelization of the American Trucking Industry." Quarterly Review of Economics and Business, 13 (Summer 1973), 33-47.

"The hypothesis of this article has two parts: (1) the ICC has cartelized motor freight; (2) the International Brotherhood of Teamsters (IBT) has expropriated the resultant excess profits. . . . In summary, a trucking cartel does exist in the U.S., does significantly misallocate resources, and is jointly managed by the ICC and the IBT. . . ."

Bailie, J. Gerald. Trucking Bankruptcies in Canada (1950-1972). N.p., n.d. 14 pages.

"This analysis was undertaken because it was thought that the bankruptcy information would be useful in a much larger study, namely, the cause and effects of mergers and acquisitions in the trucking industry, and the resulting impact on the competitive environment."

Bergen, Blanton P., and Barrett, Colin. The Elements of Contract Carriage. Washington, D.C.: Traffic Service Corporation, 1972. 31 pages.

The pamphlet defines contract carriage and outlines the services it provides, legal issues and the execution of the contract. (MTC 388.324 B453)

Canada. Ministry of Transport. International Truck Traffic Survey.  
Ottawa, 1974. 1 vol.

This study was undertaken as a pilot project by the Motor Carrier Division to survey the international truck traffic between Canada and the U.S. to determine the share of this market by carriers of both countries. More specifically, the study was to determine "the location, direction, nature and magnitude of transborder traffic flows; the major motor carriers involved and indicate their domicile and relationship to other motor carriers; the relative problems faced by Canadian and American carriers in obtaining and using operating authorities in the other jurisdiction; and the economic and qualitative differences between U.S. and Canadian carriers." Information on commodity shipped, weight of shipment, carrier's name, port of entry/exit, and origin/destination was kept. (OTA)

Canada. Statistics Canada.

The following publications contain statistics relevant to the Canadian trucking industry.

Motor Carriers: Freight. Quarterly. Cat. no. 53-005.

Revenues and expenses of motor carriers with gross annual operating revenues exceeding \$100,000, by type of carrier. Selected comparison and a chart showing average operating revenues and expenses.

The Motor Vehicle, Part I: Rates and Regulations. Annual.  
Cat. no. 53-217.

Commercial motor vehicle regulations, tax and licence fee rates, reciprocal highway agreements, size, weight and safety regulations, taxes on gasoline and other motive fuels, by province; explanation of licence symbols.

The Motor Vehicle, Part II: Motive Fuel Sales. Annual.  
Cat. no. 53-218.

Gross and net sales of gasoline and net sales of diesel oil by year and by month, by province.

The Motor Vehicle, Part III: Registrations. Annual. Cat. no. 53-219.

Registration of motor vehicles by type including passenger automobiles, trucks, motorcycles, buses, trailers and others; an historical table of total registrations; other licences including drivers', chauffeurs' and dealers' licences; motor vehicle registrations are shown by census divisions and municipalities.

The Motor Vehicle, Part IV: Revenues. Annual. Cat. no. 53-220.

Revenues from motor vehicle registrations, motor fuel taxes and other related revenues by provinces.

Moving and Storage, Household Goods. Annual. Cat. no. 53-221.

A report on firms engaged primarily in the moving and storage of household goods including financial and operating data.

Motor Carriers: Freight (Common and Contract), Part I. Annual. Cat. no. 53-222.

Statistical data on motor carriers both common and contract. Investment operating revenues, expenses and other data on Canadian-domiciled carriers.

For-Hire Trucking Survey. Annual. Cat. no. 53-224.

Provides information on the domestic intercity movement of goods by Canada's for-hire trucking industry. Main tabulations include data on transport revenue, tons carried and ton-miles for major cities and regions.

(Source: Statistics Canada. Catalogue 1975.)

Canada. Transport Commission. Economic and Social Analysis Branch. The Canadian Trucking Industry: Issues Arising Out of Current Information. Ottawa, 1975. 79 pages.

The report presents "an overview of the industry by consolidating the available literature and statistics, as found in both Canadian and U.S. sources. The material in this paper is organized under three general areas. These are industry structure, related economic characteristics and specialized sectors of the industry. Industry structure is described by the growth, firm size and market, financial and cost characteristics of the industry. Employment and earnings, productivity, competition and ownership are the factors considered in this section on related economic characteristics of the industry. The section on specialized sectors of the industry focusses on specialization by type of operation (i.e. common carrier, private carrier) and by commodity." Includes a bibliography. (U of T Bus. HE 5635 A4 1975)



Church, Donald E. "Highway Share of Intercity Shipments by Manufacturers in the United States," Traffic Quarterly, 25 (January 1971), 5-16.

Factors considered are industrial groups, private truck share, plant size, geographic area, and the relationship of weight, distance and highway share.

Davis, Frank W. Jr.; Heathington, Kenneth W.; Symons, Richard T.; and Griesse, Stephen C. "Bus and Taxi Package Express: a Major Component of Urban Goods Movement." Transportation Research Forum. Proceedings of the 15th Annual Meeting, October 10-12, 1974, San Francisco, Calif. Oxford, Ind.: Richard B. Cross Company, 1974. pp. 145-152.

The article examines reasons for a shipper's choice of bus or taxi transport and the advantages and disadvantages of such a service. Various case studies are used to illustrate the arguments presented. (JPT)

Easton, Sir James. Transportation of Freight in the Year 2000, with Particular Reference to the Great Lakes Area. Detroit, Mich.: Detroit Edison Co., 1970. 129 pages.

Chapter 3, "The Trucking Industry" (pp. 25-38), looks at intercity trucking which is in competition with other modes, and intercity trucking in relation to the metropolitan area. In the latter case the degree of competition is considerably reduced. The chapter also covers the nature and growth of the industry, trucking classification, and the industry's problems in the metropolitan sector. (MTC 380.51 Ea7)

Hartwig, James C., and Linton, William L. Disaggregate Mode Choice Models of Intercity Freight Movement. Evanston, Ill.: Northwestern University, Transportation Center, 1974. 112 pages.

"This thesis investigates the applicability of using disaggregate mode choice models to examine intercity freight mode choice. Logit, probit, and discriminant models are applied to disaggregate rail and truck freight bill data. Variable factors included in these models are transit time, freight cost, reliability, and the value of commodity. This study concludes that freight cost, reliability, and value of commodity are very significant in freight mode choice. Furthermore all three models are found to be viable analytic forms for use in freight mode choice research." (U of T Eng. HE 5613 H35)



Kneafsey, James T. The Economics of the Transportation Firm: Market Structure and Industrial Performance. Lexington, Mass.: D.C. Heath and Company, 1974. 132 pages.

"This book is a study of the firms comprising the transportation industries in the United States. Its focus is on the industrial organization aspects of the largest transportation firms. In particular, the book examines the market structures of the airline, railroad, and motor trucking industries and the ways in which the firms in these industries behave and perform. . . ."  
(U of T HE 203 K55)

Lamkin, Jack. "Organization and Competition in Transportation: the Agricultural Exempt Sector." Transportation Journal, 13 (Fall 1973), 30-37.

The article deals with competitive nature of the industry, concentration, entry and exit, excess capacity, economies of scale, and market performance.

MPS Associates Ltd. The Influence of Truck-Rail Competition on Rate Patterns. Ottawa: Canadian Transport Commission, 1973. 52 pages plus appendices.

"The objective of this study is to indicate the extent to which existing truck-rail competition has affected rate patterns on Manitoba-related traffic. . . . It is primarily in the area of competition between long haul trucking and rail transport that this study focuses. The approach . . . is as follows: first, to identify factors which influence truck-rail competition for Manitoba-related traffic; second, to analyze selected representative rate changes over a five-year period for traffic moving to and from Central Canada and Manitoba, and to and from other western provinces and Manitoba; third, to indicate the extent to which changes in rates by rail have been followed by changes in highway rates, or vice-versa . . ."  
(TDA HE 2301 M68)

Mallen, Bruce E., and Pernotte, Jean Francois. Decision-Making and Attitudes of Canadian Freight and Cargo Transportation Buyers. Montreal: Sir George Williams University, 1972. 49 pages.

"The purpose was to detail the decision-making process of the buyers and to elicit their general attitude towards the carriers (excluding air) and their specific attitudes towards the carriers' marketing efforts." (Scott HE 199 C3 M33)

Morton, Alexander L. Competition in the Intercity Freight Market: a Waybill Study of the Motor-Carrier Industry. Washington, D.C.: Dept. of Transportation, Office of Systems Analysis and Information, 1971. 150 pages.

The report concerns characteristics of the motor carrier industry in terms of commodities carried, truckload and less-than-truckload shipments, distance of trips, prices and price variation according to weight and length of haul. The study includes a comparison of truck and rail freight characteristics, the commodity composition of motor carrier traffic, and truck-rail competition by commodity. (MTC PB 198 578 microfiche)

Morton, Alexander L. "Intermodal Competition for the Intercity Transport of Manufacturers." Land Economics, 48 (November 1972), 357-366.

The article presents a traffic analysis of shipments of manufactured goods by rail and truck. Factors affecting modal choice are discussed.

Mozes, Stephen L. The Canadian Trucking Industry: an Economic Analysis of the Structure, Size, Existing Production Relations, Truck-Rail Competition and the Future of the Industry. M.A. thesis, Dalhousie University, 1972. 156 pages.

"An examination of the Canadian for-hire intercity trucking industry was undertaken with the aim of determining the relative strengths of road vs. rail and their respective economic sphere of influence. An attempt was made to identify the type of competition between the modes. A production function was estimated for the industry the aim of which was to determine the economies of scale which existed in this industry. The economic structure was also analyzed. Finally the future of the industry and the truck-rail competition was examined. . . ." (Ad. St. HE 5635 A6 M68 microfilm)

Podmore, David R. "An Examination of Motor Carrier Operations in the Mackenzie Valley, 1973." Roads and Transportation Association of Canada. Annual Conference Proceedings: Some Papers from Unpublished Workshops, May 2-5, 1976, Quebec. Ottawa, 1976. pp. 65-90.

The paper is based on the author's M.A. thesis (1974) and gives an historical development of trucking in the Mackenzie Valley, types of trucking services, volume of northbound commodity flow, line-haul operating costs, rates and revenues, and competition between modes. (MTC)

Rakowski, James P. "Competition Between Railroads and Trucks."  
Traffic Quarterly, 30 (April 1976), 285-301.

". . . This article analyzes the competitive performance of railroad and highway operations, based on market share data and cost information. Total freight-haul tonnages as well as those for specific commodities are investigated to ascertain modal share in relation to both length of haul and shipment size. . . ."

Surti, V.H., and Ebrahimi, A. "Modal Split of Freight Traffic."  
Traffic Quarterly, 26 (October 1972), 575-588.

The article covers rail and truck modal split in terms of commodity carried, size of shipment, length of haul and geographic area. It includes the application of regression models to the data.

Taff, Charles A., and Rodriguez, David. "An Analysis of Some Aspects of Operating Rights of Irregular Route Motor Common Carriers."  
Transportation Journal, 15 (Winter 1975), 31-42.

The study examines six classes of irregular route common carriers and indicates that this segment of the industry is becoming increasingly competitive.

Watson, Peter L.; Hartwig, James C.; and Linton, William E. "Factors Influencing Shipping Mode Choice for Intercity Freight: a Disaggregate Approach." Transportation Research Forum. Proceedings of the 15th Annual Meeting, October 10-12, 1974, San Francisco, Calif. Oxford, Ind.: Richard B. Cross Company, 1974. pp. 138-144.

The paper concerns the "mode choice decision between truck and rail for the intercity movement of a manufactured good. . . ." and includes a discussion of the variables on which data are required and analysis of the data. (JPT)

Wyckoff, D. Daryl. Organizational Formality and Performance in the Motor-Carrier Industry. Lexington, Mass.: D.C. Heath and Company, 1974. 125 pages.

The book concerns the regulated common motor carriers of general commodities and covers nature, structure and operations of the industry, discusses general models of organizational development and behaviour, and constitutes an analysis of the effect of formal organizational development procedures on the industry.  
(U of T HE 5623 W9)

#### IV. RATE-MAKING

American Trucking Associations, Inc. Dept. of Research and Transport Economics. "Regulation of Motor Freight Transportation: a Quantitative Evaluation of Policy [by] James Sloss. Bell Journal of Economics and Management Science, Autumn 1970, Vol. 1, No. 2: an Analysis." [Washington, D.C.], n.d. 9 pages plus appendix.

This paper discusses "questions concerning the data used by Mr. Sloss and the validity of the factors underlying the mathematical analysis". The firm of Harter Williams and Associates, Washington, D.C. was asked to evaluate the statistical and econometric methods used. This analysis is attached as Appendix A to the ATA analysis. (OTA)

Archer Consulting Ltd. Tabulation of Motor Carriers Freight Rates. Ottawa: Ministry of Transport, 1975. 3 vols.

The report tabulates freight rates for 122 city pairs across Canada. (TDA HE 5635 .A6 A73)

Barrett, Colin. The Theory and Practice of Carrier Rate-Making. Reprint from Transportation and Distribution Management, n.d. 16 pages.

This pamphlet covers profit motive and value-of-service, costs and cost-based rates, collective rate-making, regulation and the zone of reasonableness, role of tariff bureaux, and shippers' rights. (MTC 380.5 B275)

Canadian Manufacturers' Association. History of Freight Rate Changes in Canada; a Chronology of the Significant Adjustments in Domestic and International Freight Rates Implemented by Railways and Highway Carriers in Canada Between April 8, 1948 and March 1, 1971. [Toronto, 1971.] 44 pages.

The report covers both rail and truck rates and indicates the difficulty in gathering motor carrier data because of the various jurisdictions under which trucking comes. The effective dates with particulars are given.



Centre de Productivite des Transports du Quebec. Study Concerning Truck Transportation and Economic Factors in the Province of Quebec. Prepared for the Quebec Tariff Bureau Inc. in reply to the IBI Group study, A Preliminary Examination of Truck and Transport Rates in Canada. N.p., January 1976. 35 pages.

This report critiques the study by IBI and attempts to correct erroneous statements in that study. The report covers Montreal as the economic centre, evaluation of pickup and delivery costs in Quebec, distribution area and territories covered from the city of Montreal, comments on the methodology used in the IBI study, use of the ton-mile as a basis of comparison, and rate study in Quebec based on freight bills. (OTA)

Davis, Grant M., and Sherwood, Charles S. Rate Bureaus and Antitrust Conflicts in Transportation: Public Policy Issues. New York: Praeger Publishers, 1975. 216 pages.

This is an overview of rate bureaux in the railroad and regulated segment of the motor carrier industry and includes a discussion of the development of rate bureaux, the economic and procedural framework for conference rate-making, and an evaluation of rate-making. (Scott HE 195.5 U6 D38 1975)

\* Elliot, Dale. Tariff Bureau as Related to the Trucking Industry. N.p.: n.p., April 1975.

Fellmeth, Robert C. The Interstate Commerce Omission: the Public Interest and the ICC. New York: Grossman Publishers, 1970. 423 pages.

This is the Ralph Nader Study Group report on the ICC and transportation. Of particular interest are the chapters on rates and failure of enforcement. (U of T HE 206.2 F4)

Goodman, L.S. "Recent Trends in Transport Rate Regulation." Michigan Law Review, 70 (June 1972), 1225-1278.

The article describes "the trends in the [Interstate Commerce] Commission's work during the 1960's in some of the areas of rate regulation that could not be settled by mere reference to costs, and in other areas of changing rate policy. . . ." It is also a repudiation of the claims made in The Interstate Commerce Omission.



House, R.K. "Regulation Under the National Transportation Act and the Conflict of Jurisdictional Authority." Paper presented at the Conference on Canadian National Transport Policy, May 23-25, 1972, York University, Downsview, Ont. 25 pages.

The paper considers the dual regulation of transport by federal and provincial governments. It states that the effects of the National Transportation Act in attempting to eliminate cross-subsidization of traffic may give rise to changes in available transportation capacity and price, when integration with provincial regulations is imposed on competing carriers. (JPT)

House, R.K. and Associates, Ltd. Tariff Bureaux in Canada. Ottawa: Ministry of Transport, 1976. 1 vol.

Contents: Pt. 1: Tariff Bureaux: an Overview of Their Function and Operation. - Pt. 2: Description of Tariff Bureaux. The report examines eight tariff bureaux concerned with interprovincial and intra-provincial trucking rates.

- \* IBI Group. A Preliminary Examination of Truck and Rail Transport Rates in Canada. Ottawa: Ministry of Transport, September 1975.

The truck data in this study are based on the Archer and Trimac reports.

Jerman, R.E.; Constantin, J.A.; and Anderson, R.D. "Rate Structure for Small Shipments: a Proposal and an Assessment of Users' Attitudes." Transportation Journal, 15 (Summer 1976), 48-57.

Carriers are reluctant to keep up with the demand for small shipments because of the high costs. The article proposes a new rate structure taking into consideration four functional cost centres: pickup and delivery, platform, documentation and line haul.

Munro, John M. "Regulation of Motor Freight Transportation: a Comment." N.p., n.d. 16 pages.

This is a critique of the Canadian analysis in James Sloss' article, "Regulation of Motor Freight Transportation: a Quantitative Evaluation of Policy", Bell Journal of Economics and Management Science, 1 (Autumn 1970), 327-366. (OTA)

Olson, J.E. "Price Discrimination by Regulated Motor Carriers." American Economic Review, 62 (June 1972), 395-402.

The paper extends "the simple one-product model of price discrimination to the motor common carrier freight industry in order to predict its rate structure under the assumption of monopoly price discrimination. The model is then tested using class rates of motor common carriers of general freight."

Ontario. Ministry of Transportation and Communications. An Investigation of Freight Rates and Related Problems, Northern Ontario: Executive Summary. Downsview, Ont., March 1976. 25 pages.

The report outlines twenty problem areas with recommendations. The review was to "isolate illogical transportation conditions that could lessen the competitive nature of Northern Ontario goods . . ." Various modes of transportation including trucking are included. Background Papers were prepared for this report. (MTC 380.52 On8TC 1976)

Ontario Northland Transportation Commission. Ontario Northland Transportation Commission: Freight Rate Reductions. Toronto, June 1973. 25 pages.

This report results from the announced freight rate reductions for a list of selected commodities on the provincially owned Ontario Northland Railway and Star Transfer, a trucking subsidiary of the ONTC. This action was taken to reduce consumer prices in Northeastern Ontario and to improve the competitive ability of northeastern manufacturers in southern markets. A list of the selected commodities and explanation of the methodology used in the study are included. (OTA)

Palmer, John. "A Further Analysis of Provincial Trucking Regulation." Bell Journal of Economics and Management Science, 4 (Autumn 1973), 655-664.

Palmer examines similar work by J. Sloss and D. McLachlan in which they use "cross-sectional analysis to test the effects of different rate-regulatory schemes in different provinces on the average revenue per ton-mile in the Canadian trucking industry. This paper takes those authors to task for using econometric models which imply incorrect economic theory . . ."

Prabhu, M.A. "Freight Rate Regulation in Canada." McGill Law Journal, v. 17, no. 2 (1971), 292-359.

Pages 336 to 346 of this article cover regulation of highway transport, while the rest deals mainly with regulation of rail transport. This section discusses the need for and feasibility of regulation, and control of entry.

"Rate Regulation: Who Needs It? We Do!" Truck Canada, 22 (May 1974), 42-43, 45.

The article outlines the pros and cons of rate regulation in Ontario as discussed at the 1974 Shipper-Carrier Conference.

Sloss, James. "Regulation of Motor Freight Transportation: a Quantitative Evaluation of Policy." Bell Journal of Economics and Management Science, 1 (Autumn 1970), 327-366.

"This study develops a way of using data to measure certain economic effects of transport regulation, particularly the rate effects associated with regulation of the motor carrier industry. . . ." The study indicates that trucking charges are higher in the presence of regulation for both Canada and the U.S.

Sloss, James. "The Regulation of Motor Freight Transportation in Canada: a Reappraisal of Policy." Paper presented at the Conference on Socioeconomic Experience Abroad, Cornell University, Ithaca, N.Y., July 22-23, 1975. 30 pages.

This is an update of the author's article "Regulation of Motor Freight Transportation: a Quantitative Evaluation of Policy" published in the Bell Journal of Economics and Management Science, Autumn 1970. (TDA HE 199 .C2 S56)

Summerley, R.G. "Transportation and Regional Development: a Look at Northeastern Ontario." Roads and Transportation Association of Canada. Annual Conference Proceedings, September 22-26, 1974, Toronto. Ottawa, 1974. pp. 180-196.

The paper describes an experiment conducted in Northeastern Ontario during the summer of 1973 to determine the impact of freight pricing for both rail and truck modes. The study indicated that transport costs were generally not responsible for the increased cost of consumer goods in the north. (MTC)

- \* Trimac Consulting Services Limited. Highway Freight Data for Selected City Pairs. Ottawa: Ministry of Transport, April 1975.

Walter, C.K. "Measuring Pick-Up and Delivery Costs for Small Shipments." Transportation Journal, 14 (Fall 1974), 51-56.

"One of the primary cost centers for trucking companies handling LTL traffic is their pick-up and delivery operations. This article describes a study of carrier pick-up and delivery costs and arrives at a method of measuring these costs for varying shipment sizes. . . ."

Woods, Douglas W., and Domencich, Thomas A. "Competition Between Rail and Truck in Intercity Freight Transportation." Transportation Research Forum. Proceedings of the 12th Annual Meeting, October 18-20, 1971, Philadelphia, Pa. Oxford, Ind.: Richard B. Cross Company, 1971. pp. 257-288.

The paper examines the effects of rate regulation on the current modal split, the value to shippers of superior truck service, cost comparisons, and the effect of truck traffic on highway expenditures. (U of T HE 1 T83 1971)

#### V. SERVICE TO SMALL CENTRES

- \* American Trucking Associations, Inc. Public Relations Dept. Small Town Blues. Washington, D.C., 1976. 12 pages.

"A survey of what effects deregulation of the American trucking industry would have on small communities and non-urban areas of the United States."

Horosko, Andrew T., and Bergan, Arthur T. "Potential for Consolidation of the Saskatoon Based Common Carriers." Roads and Transportation Association of Canada. Annual Conference Proceedings: Some Papers from Unpublished Workshops, May 2-5, 1976, Quebec. Ottawa, 1976. pp. 5-28.

". . . This paper presents the common terminal concept and discusses the effects implementation of this concept would have



on the pickup and delivery and interline operations of the for-hire common carriers in Saskatoon. . . ." This project was undertaken by the Transportation Development Agency, the Ministry of State for Urban Affairs, Underwood McLellan and Associates Ltd., and the Transportation Centre at the University of Saskatchewan. (MTC)

Ontario Lumber Manufacturers' Association. Brief Submitted on Behalf of the Ontario Lumber Manufacturers' Association to the Hon. John R. Rhodes, Minister of Transportation and Communications: Transportation Problems Facing the Lumber Industry [and] Amendments to the Public Commercial Vehicles Act and Regulations Thereunder. N.p., [1974.] 14 pages.

The brief outlines transportation problems of the lumber industry in Northern Ontario caused by the rapid development of the industry and corresponding lack of adequate transportation services. Amendments to the PCV Act are suggested. (OTA)

Ontario Lumber Manufacturers' Association. Reply to the Brief Submitted by the Ontario Transport Association, Submitted on Behalf of the Ontario Lumber Manufacturers' Association to the Hon. John R. Rhodes, Minister of Transportation and Communications, Regarding Transportation Problems Facing the Lumber Industry [and] Amendments to the Public Commercial Vehicles Act and Regulations Thereunder. N.p., October 28, 1974. 7 pages.

OLMA maintains that the lumber industry requires continuing transportation service which is not provided by licenced carriers which are based in Southern Ontario. The problem of empty backhaul is examined. (OTA)

Ontario. Ministry of Transportation and Communications. Truck Capacity Analysis Study (Northern Ontario Lumber Industry). Downsview, Ont., [1975?] 7 pages plus 5 figures.

This analysis was undertaken by the Ontario Ministry of Transportation and Communications as a result of the Ontario Lumber Manufacturers' Association's request to rescind PCV licence requirements. In general, the results of the study show that there is adequate service for the transportation of lumber with the possible exception of Northeastern Ontario (Cochrane, Timiskaming and the portion of Nipissing north of North Bay). (OTA)



Ontario Trucking Association. Submission by Ontario Trucking Association to the Hon. John R. Rhodes, Minister of Transportation and Communications in Reply to the Brief of the Ontario Lumber Manufacturers' Association on the Deregulation of the Trucking of Lumber and Associated Products. Rexdale, Ont., October 17, 1974. 13 pages plus appendices.

The submission affirms OTA's opposition to relaxing government control of trucking because of the threat of bankruptcy to regulated carriers and lack of concern for the public interest. OTA maintains that there is sufficient truck transportation to accommodate service to the lumber industry. This brief analyzes inaccuracies in the OLMA's brief and deals with the consequences of deregulation. (OTA)

Sparks, Gordon A., and Salloum, Doug D. Increases in Expenses and Revenues for General Merchandise Carriers in Saskatchewan, 1971-1974. Saskatoon, Sask.: The Transportation and Geotechnical Group, Dept. of Civil Engineering, University of Saskatchewan, 1974. 37 pages.

The study is presented in three parts: "(1) an analysis of the distribution of total operating expenses, increases in operating expenses and the effect of these increases on total operating expenses (2) an analysis of revenue-generating characteristics of general merchandise carriers, rate increases and effect of rate increases on revenues and (3) a comparison of increases in operating costs with the increases in revenue resulting from increases in rates." Although the study does not deal with service to specific rural areas of the province, it implies that many of the for-hire trucking firms servicing rural areas are experiencing financial difficulties. (OTA)

Sparks, Gordon A., and Shaw, Michael F. "Saskatchewan Motor Carrier Freight Transportation: Its Development and Role." Roads and Transportation Association of Canada. Annual Conference Proceedings: Theme Sessions, September 22-26, 1975, Calgary. Ottawa, 1975. pp. 241-264.

This paper concerns the importance of trucking to the province of Saskatchewan and considers the problem of servicing sparsely populated areas as a result of the withdrawal of less-than-carload rail service to rural regions. (JPT)

## VI. EMPTY BACKHAUL

Miller, E. "Effects of Regulation on Truck Utilization." Transportation Journal, 13 (Fall 1973), 5-14.

The article discusses empty backhaul and mentions previous studies. It specifies various types of trucks and differences between private and for-hire carriage.

U.S. Interstate Commerce Commission. A Preliminary Assessment of Empty Miles Traveled by Selected Regulated Motor Carriers. Prepared by C. Anthony Bisselle, The MITRE Corporation. Washington, D.C., 1976. 90 pages.

"This report presents a preliminary assessment of the empty mileage problem for motor carriers of property. Six large carriers were interviewed - two each from the categories of general freight, petroleum products, and household goods. The information gathered concerns the percentage of empty miles experienced annually, reasons for the empty miles as well as for circuitous miles, and fuel consumption rates for empty and loaded trucks. . . ."

## VII. ECONOMIC EFFECTS OF RECIPROCITY

Automotive Transport Association of Ontario. Public Commercial Vehicle Licence Fees: a Submission by the Automotive Transport Association of Ontario for the Consideration of Hon. Gordon Carton, Q.C., Minister of Transportation and Communications. Rexdale, Ont., September 1, 1973. 25 pages.

In response to the government's increase in PCV fees, the Association requests that the fees cover the costs of administering and enforcing the PCV Act. The brief deals with the impact of the PCV licence fee on for-hire carriers. (OTA)

Belanger, Gilles J. Presentation on Reciprocity Made to the Select Committee on Highway Transportation of Goods. N.p., August 25, 1976. 13 pages.

The paper discusses interprovincial and international (Canada-U.S.) reciprocity and includes a section on Ontario laws providing for reciprocal privileges. The author suggests a tax sharing agreement as a solution (i.e. proration of sales tax, fuel tax and registration fees according to the miles driven in each jurisdiction). (OTA)

"CTA Outlines Plan for Uniformity for Sizes & Weights . . . Licence Reciprocity." Truck Canada, 21 (July 1973), 18, 20, 22-23.

Includes a discussion of a proposed licence reciprocity agreement.

Lawrie, M. "Canadian Trucking Industry Sees Need for Uniform Fuel Tax System." Bus and Truck Transport, 50 (August 1974), 18-20.

A discussion of fuel tax problems especially for extra-provincial truckers.

"OTA Discusses Fuel Tax with Revenue Minister." Truck Canada, 24 (April 1976), 22.

Methods of applying the diesel fuel tax are discussed.

\* Private Carrier Conference. Reciprocity Guide for Private Motor Carriers. 1975 ed. Washington, D.C., 1975. 122 pages.

A comprehensive state-by-state (including Canadian provinces) list of regulations, fuel purchase laws, mileage taxes, trip permits, excess size and weight permits, and registration requirements. MTC Library has the 1972-73 edition.

U.S. Dept. of Transportation. Federal Highway Administration. Effects of Current State Licensing, Permit, and Fee Requirements on Motor Trucks Involved in Interstate Commerce. Prepared by Midwest Research Institute. Washington, D.C., 1975. 128 pages and appendices.

". . . The report concentrates on four categories of legalization requirements, namely: vehicle registration fees, motor fuel taxes, third structure taxes, and public utilities commission

permits. The study found that each State typically requires two to four items of clearance for Interstate truck passage, and that from State to State, compliance procedures and fees differ substantially. . . ." Interviews were used extensively to collect the data. (MTC PB 241 983 pc)

#### VIII. ECONOMICS OF VARIOUS TYPES OF MOTOR CARRIER FIRMS

Barker, B.C. "Private Trucking: Is It Right for Your Company?"  
Bus and Truck Transport, 50 (March 1974), 18-21.

The discussion concerns distribution management, utilization of equipment, costs and profits.

Conroy, R.G. "Capital Requirements of the Motor Carrier Industry."  
Transportation Research Forum. Proceedings of the 11th Annual Meeting, October 22-24, 1970, New Orleans, La. Oxford, Ind.: Richard B. Cross Company, 1970. pp. 267-277.

The paper outlines the financial status of the American trucking industry, reasons for this position and possible suggestions for improving it. (MTC)

Dicer, Gary N. "Economies of Scale and Motor Carrier Optimum Size."  
Quarterly Review of Economics and Business, 11 (Spring 1971), 31-37.

This is a general approach to the issue of economies of scale and motor carrier optimum size. The author mentions two previous studies. He examines factors leading to economies and diseconomies of scale and concludes that the optimum size may be larger than expected because of the trend to mergers.

The Elements of Private Carriage. Reprint from Transportation and Distribution Management, 1970. 30 pages.

The article deals with advantages and disadvantages of private carriage in the U.S., laws regarding private carriage and traffic balance. A supplement entitled "The Choice of Leasing" by William B. Wagner is included. (MTC 388.324 E1.26)



Hoekenga, Earl N. "The 'Sum of Money' Needed to Provide the Capacity to Render Service." Transportation Research Forum. Proceedings of the 13th Annual Meeting, November 8-10, 1972, Denver, Colo. Oxford, Ind.: Richard B. Cross Company, 1972. pp. 163-170.

The article deals with the financial status of the motor carrier industry and the undertaking of the "Sum of Money" Project with a view to improving the industry's financial position as a result of the ICC's revenue-need criteria. (JPT)

Johnson, James C. "An Analysis of the 'Small-Shipment' Problem with Particular Attention to Its Ramifications on a Firm's Logistical System." ICC Practitioners' Journal, (July-August 1972), 646-666.

The paper examines the nature of the small shipments problem, its significance from the business firm's logistical point of view, and proposed and optimum solutions.

Johnson, James C. "The Small-Shipment Problem: Fact or Fiction?" ICC Practitioners' Journal, (March-April 1973), 291-307.

The article reports on a survey of carriers and shippers regarding the nature of the small shipments problem and proposed solutions. Results of the survey indicate that the problem is less severe than previously thought.

Johnson, Martha. Improving Motor Truck Social, Environmental, and Economic Utilization: a Literature Review. Detroit, Mich.: Motor Vehicle Manufacturers Association, 1975. 113 pages.

The report covers the business literature for 1973, 1974 and the first six months of 1975 and attempts to objectively present the various sides of major issues and suggests area for further research. Topics covered are economic regulation, better utilization of equipment, logistics improvement, highways and roads, the environment, financing, and the driver environment and vehicle safety. Coverage is American. (OTA)

Kneafsey, James T. Transportation Economic Analysis. Lexington, Mass.: D.C. Heath and Company, 1975. 418 pages.

This book deals with the economic theory of the firm as applied to the transportation industry. The author outlines various oligopoly models for transportation markets and discusses the objectives of transportation regulation. Chapters on the motor trucking industry and the economics of scale within it are included. (U of T HE 151 K57)



- \* Koenker, Roger W. The Estimation of Input Demand Functions and the Relative Economic Efficiency of Regulated Trucking Firms. Ph.D. thesis, University of Michigan, 1974. 130 pages.

"A system of input demand equations serves as a convenient reduced form statistical model for empirical micro-economic studies of production. . . ." For complete abstract, consult Dissertation Abstracts International, Volume 35/05-A, page 2491.

- Lawrie, M., and Bailey, A. "Leasing is Looming Larger." Truck Canada, 21 (August 1973), 19, 22, 24-27.

A discussion of the current situation of leasing and comparison of leasing and buying.

- Levine, Harvey A. "Supporting Motor Carrier Revenue Need; What the Future Holds!" Transportation Research Forum. Proceedings of the 13th Annual Meeting, November 8-10, 1972, Denver, Colo. Oxford, Ind.: Richard B. Cross Company, 1972. pp. 171-187.

The paper traces "the historical development of the Interstate Commerce Commission's revenue-need criteria for motor carriers", discusses "how carriers reacted to such criteria, speculates as to what the future criteria may (or at least should) be", and raises "the issues facing both motor carriers and the regulators if such criteria are developed". (JPT)

- Miller, Mark S. Motor Carrier Terminal Location in Chicago Region: a Staff Technical Report. Chicago, Ill.: Chicago Area Transportation Study, 1974. 215 pages.

Originally presented as the author's thesis, Northwestern University, it attempts to "establish the primary criteria considered when choosing a motor carrier terminal designed to handle intercity less-than-truckload (LTL) shipments." (Scott HE 5634 C4 M54 1974)

- Murphy, R.L. "Private or For-Hire?" Distribution Worldwide, 74 (September 1975), 39-41.

The article deals with the pros and cons of private and public carriage.

Oi, Walter Y., and Hurter, Arthur P. Jr. Economics of Private Truck Transportation. Dubuque, Iowa: Wm. C. Brown, 1965. 365 pages.

Research performed for the Transportation Center, Northwestern University, Evanston, Ill. The work covers the growth of highway transportation, private truck fleets of large shippers (1939-1961), industrial and regional incidence of private trucking, firm size and feasibility, costs of highway transportation, value-of-service component in rail freight revenues, and an empirical analysis of the private carriage option. Much of the data was obtained from a survey of shippers conducted in 1962 by the Transportation Center. The data were analyzed using an economic model of vertical integration which assumes that proprietary trucking will be employed by a firm whenever it is profitable for the firm. (MTC 388.324 O)

"Private Trucking Report." Canadian Transportation and Distribution Management, 75 (December 1972), 15-21.

Several articles comprise the report which deals with the advantages, disadvantages and costs of private trucking.

Rutter, Kenneth James. The Locations and Relocations of Class "A" Common Carrier Terminals in the City of London, 1950-1975. Submitted in fulfillment of the requirements of Geography 490, Dept. of Geography, University of Western Ontario, 1976. 63 pages.

The thesis deals with terminal operations and facilities, spatial distribution of terminals within the city of London (mapped for five year intervals), and factors that affect the location of terminals. Answers to the questionnaire (Appendix II) were used to compile the data. (OTA)

Shrock, D.L. "Motor Carrier Cost Analysis: the Next Step." ICC Practitioners' Journal, (July-August 1975), 572-587.

". . . Included in this presentation are: (1) a discussion of the general problem of cost determination as related to motor carrier operation, (2) a description of both early and recent developments in the literature on motor carrier costs, (3) an analysis of potential solutions to the problem and difficulties encountered in their implementation, and (4) a discussion of the advantages and disadvantages arising from the adoption of a modified cost analysis system. . . ."

Sigg, Bernard V. "The Economic Efficiency of Private Motor Transportation." Transportation Research Forum. Proceedings of the 15th Annual Meeting, October 10-12, 1974, San Francisco, Calif. Oxford, Ind.: Richard B. Cross Company, 1974. pp. 439-442.

The paper examines the relative costs of private and for-hire motor carriage and identifies the empirical economic efficiencies of private motor transportation. It concludes that the average private carrier is more efficient. (JPT)

Silberman, Irwin H. The "Sum of Money": an Assessment of the Financial Posture and Revenue Needs of Motor Common Carriers of General Freight. Washington, D.C.: Regular Common Carrier Conference, 1975. 33 pages.

The report updates an earlier report having the same title and published in April 1973. The objectives of the research were "to document the financial profile of the industry; to develop meaningful criteria for measuring the performance of the industry; and to relate those criteria to the issues of revenue needs and required earnings levels". The report covers 1968 to 1972. (OTA)

Stuessy, Dwight. "Cost Structure of Private and For-Hire Motor Carriage." Transportation Journal, 15 (Spring 1976), 40-48.

The paper explains why private motor carriage has a cost advantage over for-hire carriage in the small shipment/short haul range.

\* Stuessy, Dwight. The Economic Determinants of Private Trucking. Ph.D. thesis, George Washington University, 1973. 219 pages.

"This study identifies and quantitatively verifies economic reasons for the existence of private truck operations. . . . The study theorizes that private trucking is the result of profit maximizing behavior on the part of shippers. . . ." For complete abstract, consult Dissertation Abstracts International, Volume 34/09-A, page 5443.

Taff, Charles A. Commercial Motor Transportation. 5th ed. Cambridge, Md.: Cornell Maritime Press, 1975. 559 pages.

Planned as a textbook for courses in motor transportation and carrier management, the book deals with highways and highway financing, equipment, types of operations, localized and specialized carriers, economics of commercial motor transportation,

financing motor carrier operations, management and operations, labour relations, terminal operations, claims, insurance, motor freight classification, rates, and regulation. (MTC 388.3 T.123 1975)

Tett, W.A. "Financial Considerations in Planning for Private Motor Transportation." Transportation Journal, 12 (Winter 1972), 20-27.

The article covers capital budget, planning capital acquisitions and leasing as an alternative to buying.

Voorhees, Alan M. and Associates. Freight Terminal Characteristics Related to Ground Transportation Access. East St. Louis, Ill.: East-West Gateway Coordinating Council, 1970. 62 pages.

This study concerns the impact of freight terminals on the highway transportation system, and is the second phase of the terminal facilities study. Data and information collected in the first phase, entitled Terminal Facilities Inventory, completed in August 1969, were used to develop the second phase. The study covers truck and trailer-on-flat-car terminals, terminal area characteristics, and traffic demand characteristics. (MTC 388.33 V)

Vreeland, Barrie. Private Trucking from A to Z. 2d ed. New York: Shippers Conference of Greater New York, 1969. 434 pages.

The book covers the main aspects of private trucking based on the author's experience. It includes legal issues, owning versus leasing, taxes, licences, reciprocity, and control and management of private motor transport expenses. (MTC 388.324 V957 1969)

Wild, Stan. "Sell Your Fleet and Leave the Trucking to Us." Canadian Transportation and Distribution Management, 79 (May 1976), 40-42, 44.

The article presents the advantages of contract trucking in terms of service, costs, fleets and drivers.



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The book examines the role of the owner-operator in the motor carrier industry, components of the owner-operator expenses (i.e. revenue, capital expenses, maintenance, licences and permits, driver's payment), the owner-operator as a competitor, legal issues, and the "shut-down" in late 1973 and early 1974. (U of T HE 5623 W92)

## IX. SUPPLY AND DEMAND

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- \* Cherry, Russell C. Jr. Production, Demand and Investment in Regulated Trucking: an Econometric Study. Ph.D. thesis, Brown University, 1972. 106 pages.

"The thesis is a theoretical and empirical comparison of the effects of regulation by operating ratio and rate of return regulation. A brief look at industry characteristics is followed in subsequent chapters by extensive development of mathematical models of regulation. . . ." For complete abstract, consult Dissertation Abstracts International, Volume 33/08-A, page 3889.

- Ellison, T.D. "Trucking Rates and Regional Development: a National Viewpoint." Roads and Transportation Association of Canada. Annual Conference Proceedings, September 22-26, 1974, Toronto. Ottawa, 1974. pp. 197-216.

The main discussion concerns various factors in regional development and collection of supporting data. Transportation needs were then determined following an optimal market distribution network which was compared to the existing situation. (MTC)

- Sloss, J. "The Demand for Intercity Motor Freight Transport: a Macroeconomic Analysis." Journal of Business, 44 (January 1971), 62-68.

". . . One purpose [of the paper] is to test a hypothesis that increases and decreases in the volume of goods or services demanded of an entire industry are dependent on the same factors which normally account for changes in demand for the output of a single firm, in accordance with the postulates of micro-economic theory. The second purpose is to develop a method for estimating the requirements for additional highway facilities to meet the anticipated growth of the commercial trucking industry. . . ."

#### X. INTERMODAL TRANSPORT

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Lieb, Robert C. Freight Transportation: a Study of Federal Intermodal Ownership Policy. New York: Praeger Publishers, 1972. 224 pages.

The study presents "a comprehensive legal and economic analysis of the concept of intermodal ownership" based on the U.S. situation. Limited to domestic freight transportation, the study concerns all modes of transportation with the emphasis on common carriage. More specifically, the study examines the nature of intermodal coordination and outlines alternative policies, traces the development of regulations governing ownership, and analyzes the effects of existing ownership policies on the domestic transportation system. (MTC 380.5 L621)

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"This article explores the feasibility of shifting intercity movements from truck to rail piggyback to conserve fuel. While such shifts have often been suggested this study indicates that they are not feasible. . . ." Less potential growth for piggyback traffic and less potential fuel savings are predicted.

Reebie Associates. An Improved Truck/Rail Operation: Evaluation of a Selected Corridor; Final Report. Washington, D.C.: Dept. of Transportation, Federal Highway Administration, 1975. 245 pages.

The report deals exclusively with a single corridor: Los Angeles to Portland with Sacramento as an intermediate point. It covers estimates of traffic diversions to an improved intermodal operation; impact of diversion on carriers, shippers and labour; and the impact of diversion on highway programs. The results show that an improved intermodal service could have a significant impact on motor carriers specializing in full trailer load service, while the impact on LTL regular route common carrier truckers would be modest. Savings in terms of time and money were also predicted. (OTA)

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The article discusses the advantages of multi-modal ownership. Canadian Pacific is cited as an example

# XI. LABOUR IN THE MOTOR CARRIER INDUSTRY

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"This dissertation examines the effect of collective bargaining on the structure of industry. More specifically, it attempts to determine whether or not the process of collective bargaining can, under given conditions, reduce the amount of competition in an industry. . . ." For complete abstract, consult Dissertation Abstracts International, Volume 31/11-A, page 5609.

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An update of the 1971 report. (OTA)

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The purpose of the submission is to bring to the Commission's attention some of the economic and operational characteristics of the for-hire trucking industry. The submission deals with various issues regarding safety (ethics of safe operation, safety programs conducted by the industry, the fatigue phenomena, and the Canada Motor Transport Hours of Work Regulations) and includes a study entitled Characteristics of the Hours of Work in the Extra-Provincial Trucking Industry Since 1968. The study covers extent of public interest in the trucking industry, nature of the industry, provincial legislation, highway and city drivers, dockmen and yardmen, maintenance workers, and dispatchers. Appendix A to the study gives statistical summaries, while Appendix B gives comments from selected questionnaires. Appendix C contains the CTA questionnaire. (MTC 331.257 C.16TA 1971)

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by the  
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June 1976

Key to Locations

Envir - Ontario. Ministry of Environment Library.

Labour - Ontario. Ministry of Labour Library

MCBu - Metro Central Business Library

MCSS - Metro Central Social Sciences Library

MTC - Ontario. Ministry of Transportation & Communication Library

NY W - North York Public Library - Willowdale

Nat Res - Mines - Ontario. Ministry of Natural Resources - Mines  
Library

OTL - Legislative Library of Ontario.

TEIGA - Ontario. Ministry of Treasury, Economics & Intergovernmental  
Affairs Library

U of T - University of Toronto. Faculty of Law Library

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Note: mf means copy available on microfilm only.

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PAIS

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TERMS OF REFERENCE OF SELECT COMMITTEE ON HIGHWAY SAFETY

On motion by

Mr. Welch moves, seconded by Mr. Deans,

Ordered

That a Select Committee of the House be appointed to study the overall question of highway safety in all its phases, including the problems associated with drinking and driving, the methods of accident prevention now in general use, driver education in the school system and public education, and to examine and consider any proposals designed

to reduce the number of highway accidents submitted to the Committee and to report on methods to achieve greater safety on the highway, and more particularly, such matters as:

- the regulation and control of traffic through enforcement;
- stricter enforcement of the laws that pertain to drinking-driving offences for all ages;
- driver examination and licensing standards;
- driver improvement and rehabilitation, including the demerit point system and traffic clinics (North York Traffic Tribunal);
- an assessment of potential benefits of photos on non-counterfeitable drivers' licenses and methods of implementation and administration;
- an assessment of benefits of a vehicle registration and title system;
- an assessment of benefits of Ontario's motor vehicle inspection programs;
- the transportation of children to and from school and the vehicles and their drivers;
- the licensing of driving schools;
- equipment standards for tow trucks;
- operation of multiple vehicle combinations (pup trailers);
- the benefits of the application of a penalty against any person who leaves keys in the ignition lock of an unattended motor vehicle;
- the most appropriate type of helmet for moped riders;
- and such other matters as may be referred to the Committee by the Minister of Transportation and Communications;

And to submit an interim report to the Assembly not later than September 31, 1976, and a final report not later than December 31, 1976.

And that the Select Committee have authority to sit during recesses and the interval between Sessions and have full power and authority to employ counsel and such other personnel as may be deemed advisable and to hold meetings and hearing in such places as the Committee may deem advisable and to call for persons, papers and things and to examine witnesses under oath, and the Assembly doth command and compel attendance before the said Select Committee of such persons and the production of such papers and things as the Committee may deem necessary for any Speaker may issue his warrant or warrants.

And that the said Committee be composed of thirteen Members, as follows:

Mr. Young (Chairman), Messrs. Bounsall, Breaugh, Ferrier, Givens, Johnson (Wellington-Dufferin-Peel), Kennedy, Maeck, McCague, Mackenzie, Nixon, Norton, Riddell.

## APPENDIX - I

INTERIM REPORT REFERENCES TO FUTURE INTENTIONS OF THE COMMITTEEPage 20 Line 24

It is the desire of this Committee to establish objectives together with policies designed to achieve these objectives.

Page 28 Line 21

More discussion between this Committee and the <sup>M.T.C. re. the</sup> Ministerial Inquiry, dated June 10, 1975 will take place before our final report is submitted.

Page 34 Line 11

The number of pending prosecutions for alleged violations of the Public Commercial Vehicles Act and the Motor Vehicle Transport Act is approximately one thousand. It may well be that changes in enforcement procedures will be required. We intend to deal with this subject in our final report.

Page 35 Line 12

We have noted the trend towards an increasing use of private transportation generally in Ontario and recognize that this too has had and will have an impact on licensed for-hire carriage. We intend to devote later chapters in the final report to private carriage.

Page 37 Line 23

While the Committee takes the view that registration should take place without delay, a more detailed proposal on the operation of driver pools will appear in our final report.

Page 43 Line 17

We are continuing to study the problem (the growth of unlicensed trucking does not lie in the removal of all regulatory safeguards), but have deemed it appropriate to report at this time.

Chapter IV Energy Line 5

We have not had the benefit to date, of testimony from the Ministry of Energy, or search Staff from the Ministry of Transportation and Communications. Such testimony will receive consideration in our final report.

Page 54 Line 10

Further investigation is warranted into intermodal integration, and co operation; the tension of the concept of portable containers; and the use of "pups" or an additional trailer behind the power unit.

Page 54 Line 10

We intend to review this question (the empty mileage problem) in more detail between now and our final report in an attempt to evaluate the scope and nature of the question more quantitatively than we can at this time. We will be requesting the Ministry of Transportation to conduct a survey in conjunction with the industry to provide more significant data on the following, etc. (see P. 54 & 55).

Page 59 Line 20

We will have further comment on this subject (ex parte proceedings) in our final report, particularly when discussing Class "R" applications.

11. Page 60 Line 11  
In our final report we will deal with the regulation of transportation within regions; but in the meantime, it is suggested that the Board will continue to hold and where necessary to expand the relatively frequent hearings in the various regions of the Province.
12. Page 61 Line 13  
We are giving further study to the role of the Board in enforcement.
13. Page 70 Line 21  
We will continue to explore the impact of the refusal of Ontario to become reciprocal with other jurisdictions.
14. Page 70 Line 21  
We are aware of and intend to study further the degrees of the freedom of movement between the members of the European Economic Community in respect of all road transport.
15. Page 74 Line 2  
The \$20 fee should be abandoned both in Ontario and Michigan. Instead, negotiations should be instituted by both jurisdictions leading to membership in the International Registration Plan or in some other equitable scheme. We shall review this recommendation in our final report in the light of any action that may have taken place in the meantime.
16. Page 82 Line 19  
The Committee intends to discuss in more detail in its final report, the matters of uniformity across Canada, and of industry-government consultation.
17. Page 90 Line 6  
We have been in touch with that Committee (Select Committee on Highway Safety) and will be discussing concerns which are so strongly and mutually held. Every issue involving the safety of commercial motor vehicles on our highways which comes before us will be considered by us or by the Committee on Highway Safety. We intend to comment in more detail in our final report on these subjects, when both Committees have had an opportunity to assess what improvements are necessary and what steps must be taken.
18. Page 91 Line 9  
Further studies will be required to analyse the particulars of the available data. (on the involvement of trucks in motor vehicle collisions.)
19. Page 92 Line 17  
We will, in conjunction with the Committee on Highway Safety, examine the specific questions listed below which have been brought to our attention (See Pages 92 & 93).

APPENDIX "J" .Applications Received  
1975

## 1. The Public Commercial Vehicles Act.

Class A	196
C	71
D	692
E	59
F	202
FF	23
FS	51
H	46
K	32
T	73
L	6

2. The Motor Vehicle Transport  
Act (Canada). 6833. The Public Vehicles Act.

PV	221
PV(SB)	234
T.I.A.	380

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Total     2,969



Ontario Highway Transport Board.Revenue 1975.January 1st - December 31st, 1975.

Application fees -	\$108,270.00	
Hearing costs -	38,688.37	
Tariff of Tolls -	91,658.00	
Fees for certificates, etc. -	3,525.00	
		<hr/>
Gross revenue		\$242,141.37
Less refunds on applications and tariff of tolls		<hr/>
		2,985.00
		<hr/>
Net revenue		\$239,156.37
		<hr/> <hr/>

APPLICATIONS CONSIDERED AT HEARINGS 1975

CLASS	TRANSFER OF SHARES		APPLICATIONS			WITHDRAWN	TOTAL	REVIEWS
	LICENCES		GRANTED	DENIED				
The Public Commercial Vehicles Act.								
A	3	9	201	22	14	249	39	
C	1	5	32	7	3	48	12	
D	3	26	244	51	49	373	20	
E	2	1	2	--	--	5	--	
F	1	6	57	6	9	79	14	
FF	-	-	6	7	4	17	--	
FS	-	2	12	1	3	18	1	
H	-	2	13	8	3	26	14	
K	-	2	13	7	6	28	2	
T	2	2	39	2	3	48	1	
The Public Vehicles Act.								
PV	1	24	67	25	18	135	7	
PV(SB)	1	8	8	2	2	21	--	
The Motor Vehicle Transport Act.								
Goods	16	17	278	57	45	413	27	
Persons	2	7	34	6	3	52	--	
Freight Fwdrs.--		-	4	6	3	13	--	
TOTAL	32	111	1010	207	165	1525	137	

APPENDIX "J"

Applications considered in Chambers, 1975

C L A S S	Transfer of		licences	Applications			Interims and temporaries		Total
	shares			Granted	Denied	Withdrawn	Granted	Denied	
The Public Commercial Vehicles Act,									
A	4		15	3		3	34	8	70
C	1		11	-		-	13	2	33
D	3		41	4		17	143	50	303
E	1		4	-		1	8	-	51
F	-		14	3		10	52	1	113
FF	-		-	1		1	2	-	4
FS	-		12	-		2	9	1	34
H	1		3	-		5	-	-	10
K	-		3	-		2	1	3	9
L	-		-	-		-	-	1	8
T	4		1	-		2	15	2	26
The Public Vehicles Act.									
PV	1		8	2		12	60	7	100
PV(SB)	-		52	3		9	18	1	217
The Motor Vehicle Transport Act.									
Goods	12		18	2		8	104	31	207
Persons	2		2	1		6	3	-	30
Freight									
Forwarders	-		-	-		-	2	-	2
Total									
	29		184	19		78	464	107	1,217

	<u>Public Hearings</u>		<u>In Chambers</u>	
Year	Granted	Denied	Granted	Denied
1966	928	202	1,522	95
1967	906	301	1,005	89
1968	946	134	1,148	55
1969	958	184	676	20
1970	1,010	198	571	15
1971	1,261	279	351	11
1972	969	263	312	103
1973	1,009	146	460	29
1974	1,199	250	389	14
1975	<u>1,010</u>	<u>207</u>	<u>336</u>	<u>19</u>
Total Pub- lic hearings	10,196	2,164	6,770	420
Add, in Chambers	<u>6,770</u>	<u>420</u>		
Totals	16,966	2,584		
Percentage granted	87		Percentage denied	13

Year	<u>Public Hearings</u>		<u>In Chambers</u>	
	Granted	Denied	Granted	Denied
1966	928	202	1,522	95
1967	906	301	1,005	89
1968	946	134	1,148	55
1969	958	184	676	20
1970	1,010	198	571	15
1971	1,261	279	351	11
1972	969	263	312	103
1973	1,009	146	460	29
1974	1,199	250	389	14
1975	1,010	207	336	19
Total Public hearings	10,196	2,164	6,770	420
Add, in Chambers	6,770	420		
Totals	16,966	2,584		
Percentage granted	87		Percentage denied 13	



C.O.G.P. RECOMMENDATIONS ON AGENCIES

REPORT #9

C.O.G.P. Recommendations on Agencies

- 12.1 The Government of Ontario continue to use and establish agencies to achieve the special advantages which result from this organizational concept.
- 12.2 All agencies report to the Legislature through a Minister.
- 12.3 The Management Board re-evaluate the need for each and all of the existing government agencies.
- 12.4 The existing title of each agency within the compass of this enquiry be reviewed, with the object of ensuring that the title will henceforth reflect the real principal function of the agency concerned.
- 12.5 Advisory agencies be designated as advisory committees.
- 12.6 Members of advisory committees be appointed for one-year renewable terms, the choice to be primarily in the hands of the Minister to whom the committee in question reports.
- 12.7 Frequent turnover in membership be encouraged.
- 12.8 Judicial agencies be designated as tribunals.
- 12.9 Members of tribunals be appointed by the Lieutenant Governor-in-Council to serve during good behaviour; that they be subject to the same conditions for removal as Provincial Judges and that they hold office until retirement at the age of 65 years.
- 12.10 Each tribunal report to the Minister responsible for the administration of the Act by which it is constituted.
- 12.11 Administrative tribunals be designated as commissions.
- 12.12 Commissions report to the Minister responsible for the administration of the Act by which they are constituted.
- 12.13 Regular turnover of members be encouraged.
- 12.14 Clear policy guidelines for commissions be publicized.
- 12.15 Members be appointed by the Lieutenant Governor-in-Council.
- 12.16 Government commercial ventures be organized in the corporate form.

- 12.17 That, for ease or recognition, such commercial agencies be called corporations.
- 12.18 An efficiency audit, conducted by the Management Board, be applied at regular intervals to the commercial activities of the Government.
- 12.19 Existing commercial activities of the Government be examined for the purpose of ascertaining whether they might be more efficiently provided by the private sector.
- 12.20 The two subgroups of non-commercial agencies described in this report be designated respectively as institutes and foundations.
- 12.21 Appointments to commercial and non-commercial agencies be made by the Lieutenant Governor-in-Council.
- 12.22 Members of boards of directors of commercial and non-commercial agencies serve for limited terms only; and that a proportion of these members be retired annually.
- 12.23 Government commercial services or products be priced at their true costs; and that non-commercial activities be subsidized.
- 12.24 The Government clearly establish and publicize policies for government enterprises to follow; that, within such policies, boards of directors be given as much freedom as possible to concentrate on economic performance; and that the Government's powers over such enterprises include:
- a) the appointment and removal of members of the boards of directors;
  - b) the approval of all by-laws issued by the boards;
  - c) authorization of all expenditures and commitments in excess of a fixed maximum.
- 12.25 Where outside auditors are appointed by government enterprises, the auditors report to the Provincial Auditor as well as to the enterprise by which they are hired.
- 12.26 Wherever possible, the Government assign only one function to any one agency.

- 12.27 Those responsible for implementing the government reorganization review all agencies which perform more than one function with the object of determining whether it is practical and more efficient to separate or regroup these functions.
- 12.28 Any agency with mixed functions be classified according to its predominant activity.

## APPENDIX - K-1

INTRODUCTION

"Secret law, whether in the form of precedents or in the form of rules, has no place in any decent system of justice."

K. C. Davis, Discretionary Justice

This decade will witness the coming of age of Canadian administrative law. The stirring cries of "new despotism" of the 1930's have finally been stilled. In all parts of the country boards and commissions of all shapes and varieties are being set up by governments of all political persuasions. No sooner is some new matter declared to be in need of regulation than a board is conjured up to deal with it--or, as some might say, to deflect political heat from the responsible minister. In recent days this has been so with regard to as disparate matters as economic nationalism, competition policy, environmental quality, welfare rights, day care nurseries and doctors' hospital privileges.

So far has this process of instant boards been carried in Ontario, that the following compendium of recently created appeal and review boards should surely inspire some latter day Gilbert & Sullivan. The Provincial Entomologist has been appointed to a one man appeal board under both the Abandoned Orchards Act and the Plant Diseases Act while a fully fledged review board has been established under the Animals for Research Act. An advisory board will soon be at work under the Archeological and Historic Sites Protection Act along with a licence review board under the Artificial Insemination of Cattle Act. The Provincial Apiarist will hear appeals under the Bees Act while the Dead Animal Disposal Act makes provision for a licence review board. The Provincial Fire Marshal will hear appeals under the Lightning Rod Act and District Foresters will act as appeal officers under both the Forest Fires Prevention Act and the Loggers' Safety Act. Finally, but not exhaustively, care should be taken not to overlook licence review boards such as those provided for under the Livestock and Livestock Products Act; the Livestock Community Sales Act; the Meat Inspection Act; the Plant Diseases Act; the Pregnant Mare Urine Act, while the Weed Control Act creates the Seed-Cleaning Licence Review Board.

Before we get lost in a maze of minor boards let us remind ourselves of the vast powers granted to many modern administrative boards. One recent decision of the National Energy Board will serve as a good illustration.

In November 1971, the Board had to decide whether or not to approve applications for the export of some 2.66 trillion cubic feet of natural gas to the United States spread over the next fifteen to twenty years. The immediate money value of the applications has been reliably set at \$1-billion dollars. The applications (which, incidentally, were rejected) raised fundamental issues as to the future development of Canada as a nation.



Should the Board encourage the freest exploitation and export of our natural resources or should it attempt to encourage the establishment of job creating resource based industries at home? If the United States is denied gas during the initial period of a predicted long term energy shortage will this not simply encourage a move to other energy sources which, when developed, will deny Canada a long term market? Will a refusal to grant export licences discourage exploration thus setting in motion a declining production spiral? Should the export of gas to Ontario be given precedence over exports to the south despite the higher price the Americans are willing to pay? To what extent, if at all, should the Board take into account the low polluting characteristic of natural gas? Is the environmental crisis sufficiently acute to dictate rationing of gas? In calculating reserves what margin of safety is to be used? What is the significance of recent discoveries in the North? What social, economic and political criteria are to be used in determining Canadian needs?

There are, of course, other federal boards which are making equally far-ranging decisions as to Canada's future. The Canadian Radio-Television Commission, in its rulings on Canadian content, concentration of ownership and the relationship of on-air broadcasting to cable and in its policy in implementing the cabinet's directions on foreign ownership directly affects not only the immediate media interests but the public as a whole. The Railway Committee of the Canadian Transport Commission is manfully struggling with the immensely complicated issue of railway branch line and passenger service rationalization, while the Air Transport Committee seeks to arrive at a route allocation policy acceptable to Air Canada, C.P. Air and a covey of regional airlines. It is the Railway Committee which now has to pass on, almost on a yearly basis, rate increase applications from Bell Canada each worth hundreds of millions of dollars.

On a provincial level many boards are just as prominent. While they do not tend to make individual decisions of the same seminal significance, their cumulative effect is staggeringly important. For example, the Workmens' Compensation Board of Ontario handles nearly 400,000 claims annually and pays out over \$130-million a year. Moreover, it has wide power to assess and levy penalties against employers who do not have satisfactory safety records. These amounted to over \$5 1/2-million last year, and, according to recent accounts in the press, a penalty against an individual employer can amount to as much as \$300,000.

This is not the place to show by way of example upon example the dominant role boards and tribunals already play in our society. Every indication is that their role will grow by way of geometric progression. An impartial observer who was not taken in by the pomp and circumstance surrounding the traditional courts of law would conclude that, measured on any realistic economic or social scale, boards today often have far greater influence than the civil courts. Yet they continue to be treated as poor relatives but recently arrived in town. Nowhere is this better illustrated than in this Report.

The time has come for us to devote as much, if not, indeed, significantly more, time, effort, expertise and funds to ensure the adequate publication of board decisions. A rational reporting system which truly reflects the reality of the powers of modern administrative boards must replace the present disarray. Before this reform can be brought about a true picture of existing arrangements must be compiled. This Report accomplishes that task.

In addition to the general requirement of openness which is the keystone of the democratic political process, there are a number of pressing practical reasons why there should be the fullest possible publication of board decisions. It might be as well to mention some of these here.

### 1. The Growing Concern with Substantive Administrative Law

At one time it was thought that lawyers should largely concern themselves with the judicial review of the purely procedural aspects of the work of boards and tribunals. Recent years have witnessed a steady change in emphasis. While the importance of judicial review has in no way diminished, there is now much more involvement at an earlier stage. This new interest was reflected, for example, in the very large turnout for the most recent Special Lecture Series of the Law Society of Upper Canada which was devoted to a detailed examination of a wide range of individual boards. A similarly strong interest was shown at the last Mid-Winter Meeting of the Ontario Section of the Canadian Bar Association where a seminar on the Immigration Appeal Board and a panel discussion presented by the Administrative Law sub-section were both very well attended.

### 2. New Faces at the Bar

Many boards, particularly at the provincial level, have a very small group of practitioners who appear regularly before them. This mitigates, at least to some extent, the failure to publish decisions for the older practitioners know all they need to know from personal experience. This cozy arrangement is about to break down. Every increase in the scope of regulatory power brings before the boards additional younger lawyers who are just not prepared to learn exclusively from their mistakes and who, quite rightly, demand ready access to leading decisions and comprehensive rules of procedure. Moreover these older "personalized" boards will soon be outflanked by the more recently created provincial boards which have set out right from the start to publish their decisions thereby creating a standard to which even the most entrenched older board will be obliged to rise.

### 3. The Impact of Legal Education

Law schools today are for the first time turning out significant numbers of graduates with at least some exposure to the ac-

tual workings of a wide variety of administrative boards. Until recently the only substantive administrative law course offered was "Labour Law". Today courses such as "Law and Poverty", "Urban Law", "Securities Regulation" and "Regulated Industries", to mention just a few, are designed to focus sharply on the detailed operations of bodies such as the Ontario Securities Commission, the Ontario Municipal Board, the Canadian Transport Commission, the Unemployment Insurance Commission and the Welfare Review Board. Not only is this development putting immediate pressure on law school libraries to hunt down such publication as presently exists, but it will produce a new generation of lawyers who will eagerly seek to become actively involved in board work. With this development will come an inevitable demand for more openness.

#### 4. Publication does not Threaten Flexibility

To the extent that there has been any rationale given for the reluctance to publish, it would seem to involve a rejection of a thoroughly antiquated notion of the doctrine of precedent. It is no doubt true that in setting up many of the boards it was intended that they should be freed from the "sterile" "dead hand" of precedent which at the time crippled the ability of the traditional courts to grapple effectively with contemporary problems. This process was carried so far that on a number of occasions specific provision was placed in the empowering statute providing that precedent was to be ignored and each case dealt with on its own merits.

This swing of the pendulum carried many boards all the way from the Scylla of excessive rigidity to the Charybdis of untrammelled discretion. Today, with even the House of Lords expressing itself willing to reverse itself, it is clear that the whole notion of legal precedent has undergone considerable change. This must now be recognized in administrative law. To follow precedent is not to abjure flexibility. It is to introduce an essential element of predictability and to indicate lines of argument which may be followed successfully, which, in turn, will make a hearing a truly meaningful process. The degree of commitment to precedent should vary from board to board depending on the nature of the matter it regulates and the extent of reliance on past decisions. This should be reflected openly in the published decisions. Occasionally a board will have to depart from precedent and this will call for a greater degree of sophistication than that reflected in the crude all-or-nothing position. This is, surely, a price we should be willing to pay in order to preserve the elementary principle of fairness and consistency contained in the notion of open precedent.

#### 5. The High Price of Secrecy

Boards pay a high price in public reputation and standing when they do not bother to publish their decisions. Most liquor licence boards, for instance, are surrounded by an aura of graft and political favouritism largely because they do not publish coherent reasons for their decisions and it is presumed that money and party affiliation must be the deciding criteria.



Nowhere is this phenomenon better illustrated than in the current charges of scandal levelled at the Workmens' Compensation Board of Ontario. No one questions the need for the Board to have the power to penalize employers with bad safety records. Yet when this is done secretly and equally secretly huge penalties are compromised, it is inevitable that there will be charges of corruption. Much the same may be said of the National Parole Board. Because it does not publish reasons for its decisions, the newspapers are likely to speculate as to why some prisoners are paroled and some not. This has led to a very destructive exchange in the columns of a major newspaper in which the Chairman sought to defend his board's decisions. If adequate reasons had been published at the outset, the whole outcry could have been avoided.

#### 6. The Decline and Fall of Benign Paternalism

Many boards with strong chairmen who have been in office for many years display a marked degree of benign paternalism towards those in their charge. This is particularly marked in areas of so-called "privilege" involving matters such as parole, liquor licencing and welfare. Paternalism and the rule of law have never been compatible. Every day brings further evidence of the extent to which previously pliant minorities are no longer willing to be fobbed off with platitudes about "individual justice" but demand a clear statement of their rights.

#### 7. Public Involvement

Despite statutory exhortations to boards that they licence and regulate "in the public interest" or words of similar variety, most boards greatly discourage public participation by inadequate publication of their decisions and procedures. Public pressure is mounting for effective involvement. Recent examples of this can be seen in the area of environmental concern. Pollution Probe at the University of Toronto succeeded in forcing the Ontario government to include specific provision for public participation in the proposed Pollution Control Appeal Board. The same body was represented before the National Energy Board at the gas export hearings discussed above.

Instances abound of matters which have, until recently, been regarded as so highly technical as not to be of any interest to the public. For example, the rate structures of most public utilities are designed to encourage consumption by the provision of discounts for quantity purchases. This has now been recognized as a major contributing factor to pollution because a different rate structure would provide an incentive to invest more in insulation and other devices such as would reduce demand. How is this type of legitimate public concern to be introduced into the regulatory process when so little is known by anyone but experts about public utility rate structures? Administrative boards must be prepared to respond to demands for comprehensible information from a more informed public.

These then are some of the factors which will influence the move towards greater publication. Let us turn briefly to consider the Report itself.

The Report wisely includes more than just the obvious established boards. Thus it brings to light some particularly interesting material. There is no reason why, from a functional point of view, an Area Director and Area Committee under the Ontario Legal Aid Plan should not be regarded as boards and required to publish their decisions. Nor should the Ontario Director of Student Awards, the Ontario Police Commission or the Ontario Board of Censors be exempt from publication. Both the Telecommunications Regulation Branch and the Atomic Energy Control Board do, in fact, make decisions affecting rights and should not be allowed facily to excuse themselves from publication by intimating that they are merely concerned with technical matters.

Certain boards, such as workmens' compensation and liquor licence, have poor publishing records in all the provinces. This was not unexpected but the poor showing of several provincial human rights commissions must rank both as a surprise and a disappointment.

Various reasons have been put forward to explain some of the poor publication records over and above the obvious economic problems faced by the lesser provincial boards. For instance, it is often said that the overwhelming number of decisions which have to be made by some boards exonerates them from publication. Yet as may be seen from the example set by as diverse boards as the Immigration Appeal Board, the Public Service Commission, the Ontario Farm Products Marketing Board and the Alberta Industrial Relations Board, it is perfectly possible to devise a system of selective publication. Nor should concern for confidentiality as put forward by a number of boards be accepted as an excuse, in itself, for failure to publish. There is no reason, as the Public Service Commission and the Commissioner of Patents have demonstrated, why publication cannot be on a "no name" basis. The Indian Claims Commissioner and the Commissioner of Official Languages indicated in their replies that, as they did not make legally binding decisions they might legitimately be excused from publication. However, the Textile Clothing Board and the Restrictive Trade Practices Commission have not sought to hide behind this excuse and publish their "decisions" even though on a strictly legalistic analysis they are only "recommendations".

The Report thus reveals that for every excuse for non-publication a good example to the contrary can be shown in operation. Thus when viewed over-all there is no cause for pessimism--what is urgently needed is consolidation and systemization.

A depressing example of complete lack of organization can be seen in the undisciplined outpourings of the Ontario Municipal Board. Not only has there been a simply bewildering array of partial publication but there is no adequate index to guide one through their mounds of decisions. This board serves as a classic warning of what can happen without careful planning. On



the other hand the excellent practice of the Canadian Radio-Television Commission of including an index in its annual report, the plan of the Public Service Staff Relations Board to produce an index, the proposed five year cumulation of the Public Service Commission (which hopefully will include an index) and the two to three year cumulations contained in the Tariff Board Reports indicate that at least some determined efforts are being made to publish decisions in a meaningful form.

The Report clearly indicates that the present situation is not satisfactory. A few boards are really struggling to ensure that their decisions are published and made readily available; most are making ineffectual and disorganized attempts at publication, a few seem perversely determined to hide their decisions. If the Report succeeds in its primary task of making the board decisions as they now exist more widely available, it will make a very significant contribution to the development of administrative law. Now that the present system of publication, or more accurately lack thereof, has been clearly described, it is up to all concerned, be they the boards themselves, the responsible governments, the legal profession, law publishers, law reform commissions or concerned academics to get together in a mutual venture for improvement.



BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC- \_\_\_\_\_  
(For Office Use Only)

APPLICATION FOR MOTOR CARRIER CERTIFICATE OR PERMIT  
(Read instructions on page 6 before answering)

I. (a) Application of \_\_\_\_\_  
(Name and Trade Name, if any)

\_\_\_\_\_  
(State whether an individual, partnership, corporation, association, fiduciary, or other legal entity. If a partnership, give names of all partners. If a corporation, give name of State in which incorporated, and the names and addresses of all directors and officers.)

whose business address is: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City) (State and Zip Code)

(b) Applicant's representative to whom inquiries respecting this application may be made  
is: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State and Zip Code)

II. Will granting the authority sought in this application constitute a major Federal action having a significant effect upon the quality of the human environment?

Yes ☐. No ☐.

If yes, a statement complying with the requirements of 49 CFR 1100.250 as promulgated in *Implementation-Natl. Environmental Policy Act, 1969*, 340 I.C.C. 431, must be attached to this application.

III. (a) Applicant hereby applies for authority to engage in operation, in interstate or foreign commerce, as a \_\_\_\_\_ carrier by motor vehicle, over  
(Common or Contract)

\_\_\_\_\_ routes, in the transportation of \_\_\_\_\_  
(Regular or Irregular)

\_\_\_\_\_  
(If general commodities, so state, and name exceptions, if any. If specific commodities or classes of commodities, name them. Any limitation on service to be provided should be identified. For example, if applicant does not seek authority to transport commodities in bulk, in tank vehicles, the application should so state. If passengers, so state and indicate if it is desired to transport express, newspapers, or baggage of passengers in the same vehicle with passengers; and specify if special or charter operations, or both, are proposed.)

(b) Applicant requests authority to operate from, to, or between the following points or described areas: \_\_\_\_\_

(If *regular-route* authority is sought, describe the highways or segments thereof, in sequence, to be used and the intermediate or off-route points to be served. Intermediate points apply only to regular-route operations; off-route points apply only to regular-route carriers of property. If seasonal operations are proposed, specify the period in which such operations will be conducted. In defining the geographical scope of authority sought in an application, the term "United States" shall be construed as including the District of Columbia, and as excluding Alaska and Hawaii. Applications seeking to encompass authority to, from, or between points in Alaska or Hawaii shall specifically so state.

IV. Indicate whether applicant in prosecuting this application will present evidence of witnesses who will testify, in support of the application, as to their need for the service proposed.

Yes ☐. No ☐.

(a) If the answer is YES, applicant *must* attach to this application one or more certifications of support which shall be prepared in the form prescribed in the appendix to the instructions accompanying this application form. The certification must be signed by the individual, or by an authorized representative of the corporation, association, or partnership, upon whose support applicant intends to rely. The total number of witnesses presented in support of the application may not exceed twice the number for whom certifications are filed with the application.

Except for good cause shown, no application depending upon the supporting evidence of public witnesses will be accepted for filing unless it is accompanied by the certifications of support of such witnesses. The certifications of support are not intended for use as supporting evidence should the application be assigned for handling without an oral hearing.

(b) If the answer above is NO, explain why and describe briefly the type of evidence which will be relied upon by applicant to support its burden of proof: \_\_\_\_\_

V. (a) If applicant now holds, or has an application pending for, authority from the Interstate Commerce Commission as a motor common or contract carrier, a water common or contract carrier, a transportation broker, or a freight forwarder, identify the lead docket number assigned to such authority or application: \_\_\_\_\_

(b) If applicant has within two years of the date of this application applied for authority duplicating in whole or in part that sought in this application, identify the docket number and indicate either the disposition or the current status of the prior application: \_\_\_\_\_

(Applicant should understand that applications seeking authority which duplicates in whole or in part that sought in any such pending proceeding either may be rejected or processing thereof may be withheld until final disposition of the pending proceeding.)

(c) If applicant holds motor carrier temporary authority corresponding in whole or in part to the permanent authority sought in this application, identify the docket number assigned thereto:

No. MC- \_\_\_\_\_ issued \_\_\_\_\_  
expiration date \_\_\_\_\_.

(d) If applicant seeks authority as a motor *contract carrier*, list (1) the person or persons for whom its service now is being performed under effective contracts pursuant to any existing permits:

\_\_\_\_\_  
\_\_\_\_\_

and (2) the person or persons it would serve in the proposed operation: \_\_\_\_\_

\_\_\_\_\_

(e) If applicant seeks approval of dual operations under section 210 of the act to enable applicant and any motor carrier affiliated with applicant to conduct property operations both as a common and contract carrier by motor vehicle, specify the scope and extent of the dual operations involved: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

VI. (a) Indicate any interest, whether stock, loans, voting or management arrangements, which the applicant or any officer or director thereof, has in the affairs of other carriers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) Indicate any interest, whether stock, loans, voting or management arrangements, which any other carrier, including officers and directors thereof, or any person authorized to control a carrier, has in the affairs of applicant: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) Does the applicant know of any person who has an interest, whether stock, money, voting or management arrangements, in the applicant who also holds an interest, whether stock, money, voting or management arrangements, in another carrier? Yes ☐. No ☐.

If the answer above is YES describe the interest which such person has in applicant and in the other carrier: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

VII. (a) Applicant must submit with the application a map of the proposed operation showing also all pertinent portions of applicant's present authority.



(b) If irregular-route authority is sought, indicate whether the authority here sought can be joined with any operating authority applicant now holds, or seeks in a pending application, so as to permit the performance of a through service by applicant to, from, or between points not included in this application. Yes ☐. No ☐. If the answer is YES, indicate the points or areas where the physical operation could connect and the territory that would be served through such joinder: \_\_\_\_\_

(Attach pertinent portions of authority now held or sought in pending applications.)

(c) Show the extent to which applicant or any carrier affiliated with applicant holds authority duplicating in any respect that sought herein, or to which any application previously filed with the Commission and still pending, or any application being filed simultaneously with this one, seeks authority duplicating that sought in this application: \_\_\_\_\_

VIII. (a) If the application is assigned for oral hearing, state where applicant prefers that the hearing be held, and alternate choices: \_\_\_\_\_

(The listing of alternate choices may result in a more prompt scheduling of the hearing.)

(b) State the maximum number of witnesses applicant will present at the hearing: \_\_\_\_\_; and the approximate time their direct examination will require: \_\_\_\_\_

IX. If the evidence presented in support of this application shows that applicant, although applying for a certificate as a common carrier, would be entitled to a permit as a contract carrier, or, if applying for a permit, would be entitled to a certificate, applicant agrees that the application may be considered to be for the appropriate form of authority.

X. Applicant understands that the filing of this application does not, in itself, constitute authority to operate.

OATH

COUNTY OF \_\_\_\_\_ )  
STATE OF \_\_\_\_\_ ) ss:

\_\_\_\_\_, being duly sworn,  
(Name of Affiant)  
states that he files this application as (indicate relationship to applicant, that is, owner or proprietor, title as officer of applicant corporation or association, member of applicant partnership, or other authorized representative of applicant) \_\_\_\_\_

\_\_\_\_\_  
that, in such capacity, he is qualified and authorized to file and verify such application and to certify with respect to the availability of shipper and public witnesses to present evidence in support thereof; that he has carefully examined all the statements and matters contained in the application; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief. Affiant further states that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular.

Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable by up to five years imprisonment and fines up to \$10,000 for each offense. (See 18 U.S.C. 1001.)

\_\_\_\_\_  
(Signature of Affiant)

Subscribed and sworn to before me, a \_\_\_\_\_ in and for the  
State and County above named, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

My Commission expires \_\_\_\_\_.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has delivered a copy of this application, in person or by mail, to the following Regional Director of the Commission's Bureau of Operations for the Region in which the applicant has its headquarters:

Name of Regional Director

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned further certifies that he has delivered a copy of this application, in person or by mail, to the appropriate State Board (or official) in each of the following States *in or through* which the operations described in this application would be performed:

Name of State Board

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

## INSTRUCTIONS

All information called for in this form must be provided, and each question must be answered. If any question is not applicable, so indicate. Incomplete applications will be rejected.

Applicant must submit with the application a check or money order made out to the Interstate Commerce Commission for such amount as may from time to time be fixed by the Commission as the fee for the filing of such application.

If the space provided in the form is not sufficient to supply all of the information required, prepare the information or continue it on a separate sheet, attach it to the application, and give it the same number as the paragraph to which it refers.

The application should be typed, but if made out in neat, legible handwriting, in ink, it will be accepted; if made out in pencil, it will be rejected.

Assistance in the preparation of an application may be obtained from one of the District Supervisors of the Commission's Bureau of Operations. Before requesting assistance, however, the applicant should prepare a rough draft of the application to be used as a basis for discussion with the District Supervisor. Interviews with the District Supervisors should be arranged in advance.

Notice of the filing of this application will be published in the Federal Register. Unless applicant promptly notifies the Commission otherwise, applicant agrees to be bound by the published notice.

The applicant should keep a copy of the application for further reference. The original and one copy of the application should be mailed to:

Interstate Commerce Commission  
Washington, D. C. 20423

Applicant's name should be stated exactly as it appears in its present authority, if any. If there has been a change in applicant's business address or name, it should submit a signed written request that the Commission's records be corrected to reflect the new address or name. Any affiliation between applicant and any other carrier subject to the Interstate Commerce Act must be identified in question VI; and, if such common control or affiliation has not been approved by the Commission, applicant should indicate why it believes such approval not to be necessary.

It is particularly important that applicant describe accurately and fully the operation for which it seeks authority. The commodities to be transported by property carriers should be identified clearly, but trade names of products should not be employed.

If applicant seeks alternate-route authority or authority to serve intermediate or off-route points in connection with its presently-authorized regular-route operations, such authorized regular routes must be specifically identified and the application should not include any commodities which the carrier is not authorized to transport over the appurtenant regular route or routes.

Applicant should describe the points or areas proposed to be served in easily identifiable terms. Communities not to be found on readily accessible maps should be located with reference to counties or larger cities, and larger territories should be described in terms of States or counties or by fixed boundaries such as highways, rivers, and State or county lines, but not in terms of mileage radii from central points. Applicants seeking territorial rather than point-to-point authority should make it clear whether they wish to operate from one territory to another, between all points in a given territory (nonradial), or in both directions between, but not within, two separate territories (radial). Complicated, unclear, or otherwise objectionable restrictions on the service proposed may be rejected by the Commission.

Specific authority is not required to transport on return movements empty containers, pallets, similar shipping devices, or shipper-owned vehicles used in transporting the commodities specified in the application; nor is authority required for the return transportation of shipments rejected by the consignee provided that such services are covered by appropriate tariff provisions. Shipments which have been accepted by a consignee and subsequently returned do require specific authorization.

If applicant is under common control with other carriers, it should indicate whether it is in compliance with the pertinent statutory requirements relating to common control or management, including whether applicant has previously filed an affidavit with the Commission under section 5(10) of the Interstate Commerce Act indicating why Commission approval of such control or management is unnecessary.



By its report in *General Rules of Practice—Rule 247*, 120 M.C.C. 670 (decided November 20, 1974), the entire Commission prescribed requirements as to shipper certifications and established time limitations with respect to the submission of restrictive amendments and certifications of shipper support. Application Form OP-OR-9 requires an applicant to indicate whether its application will be supported by shippers, or others, who will present evidence in support of the application, as to their need for the service proposed. An application for a certificate, permit, or license must be accompanied by certifications of support of the prescribed form for *each* individual, corporation, or partnership known to the applicant upon whose support applicant intends to rely. Upon request by any party, the applicant shall furnish such party with copies of all certifications filed with the application. If, subsequent to the filing of an application, additional witnesses become known to the applicant, applicant shall file a certification for each such witness with the Commission and shall concurrently serve copies thereof upon all parties of record. The total number of witnesses subject to this rule whose testimony is offered in support of the application may not exceed twice the number for whom certifications were filed with the application, whether the case is designated for oral hearing or for handling under the modified procedure. In cases designated for oral hearing, certifications of additional witnesses as provided above must be filed and served not later than 30 days prior to the date assigned for commencement of hearing: *Provided*, That, the presiding officer may authorize additional certifications for witnesses to be presented at a continued hearing to be filed and served not later than 30 days prior to the date of the continued hearing. No testimony will be received from witnesses for whom such certifications have not been timely received. *Provided*, however, that the provisions of this paragraph limiting the total number of witnesses and requiring certifications for subsequently discovered witnesses shall not be applicable to applications to transport passengers, and that certifications for subsequently discovered witnesses shall not be required in cases handled under modified procedure except when assigned for oral hearing.

Restrictive amendments acceptable to the Commission may be submitted at any time: *Provided*, That except as hereinafter provided, in cases assigned for oral hearing amendments must be received by the Commission not later than (1) 30 days after the service date of a notice that the case has been assigned for oral hearing, or (2) the date of a prehearing conference assigned to consider such amendments. Restrictive amendments, submitted after such date may be considered by the Commission or presiding officer *only if exceptional reason is shown why the amendment could not have been timely filed*.

Noncompliance with the aforementioned requirements, absent a showing of good cause for failing in their observance, will result in the disallowance of testimony and evidence proffered by public witnesses upon whose behalf certifications or identifications (by name and location) have not been filed. \*\*\* Strict adherence to these requirements shall be expected with respect to all applications pending at the time of such publication and to all applications filed subsequent thereto.

BY THE COMMISSION,

ROBERT L. OSWALD,  
Secretary

(SEAL)

APPENDIX

*Approved Form for Certification of Support of Application for  
Motor Carrier Authority*

TO THE INTERSTATE COMMERCE COMMISSION:

The undersigned states that he, or the corporation, association, or partnership which he represents,  
has agreed to support the application filed by: \_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_ and to which application this certification will be attached; that applicant's proposed service is desired for  
the transportation of \_\_\_\_\_

\_\_\_\_\_  
(If application is for the transportation of property, list commodities shipped or received. If application is  
for transportation of passengers, so state.)

from and to the following points or areas: \_\_\_\_\_

\_\_\_\_\_  
The undersigned shipper supports the following applications for authority similar to that sought  
in this application. (If none, so state.) \_\_\_\_\_

\_\_\_\_\_  
(Give the name(s) of the carrier(s), the docket number(s), if available, and the date(s) of filing, if known.  
Shipper hereby agrees to provide the Commission with all such information as soon as it becomes available.)

The undersigned shipper certifies that its support for this application was first made known to  
applicant on \_\_\_\_\_  
(Date)

By signing and submitting this Certificate of Support, the undersigned, individually and on behalf of the  
corporation, association, or partnership he represents, certifies to the Commission that he, or an authorized and  
qualified representative of the corporation, association, or partnership, will appear and testify on applicant's behalf in  
any oral hearing on this application. This certification should not be signed unless there is a need for the proposed serv-  
ice and a present intent to testify in support of the applicant, and any withdrawal should be the result of the shipper's  
individual decision.

Should the support for this application be withdrawn or changed in whole or in part, the undersigned agrees  
immediately so to inform the Interstate Commerce Commission, Washington, D. C., 20423.

Continued on page 9



The undersigned hereby states that he is duly qualified and authorized to make this certification of support, and that in signing this certification he is aware that anyone who, in any matter within the jurisdiction of an agency of the United States, intentionally makes or uses any false, fictitious, or fraudulent writing or document, may be subject to prosecution and fined up to \$10,000 and imprisoned for up to five years. (18 U.S.C. 1001.)

Dated \_\_\_\_\_, 19\_\_\_\_\_  
(Firm, corporation, association, partnership, etc.,  
represented, if any.)

\_\_\_\_\_  
(Signature) (Title)

\_\_\_\_\_  
(Typed Name) (Complete Address)



APPENDIX - M

REGINA

VS

CALDWELL LEASING COMPANY

Ontario

A LEASING LIMITEDNovember 10th and 13th

Mr. Jake Snake, Auditor, Sales Tax Branch and the writer attended the office of Caldwell Leasing Limited, Toronto, to examine company records.

Mr. Donald Caldwell, President, consented to the examination and removal of some documentation, including that of Crash Driver Pool, for reproduction. Mr. Caldwell stated he had purchased equipment, under Tax Exemption (Leasing); however, failed to collect sales tax for leasing service as he was under the impression leasing service was exempt.

November 14th

The writer personally returned all original documentation, e.g. Caldwell Invoicing and Rental Agreements, Crash Driver Pool Invoicing and shippers Bills of Lading.

At this time Mr. Caldwell was interviewed and questions and answers are noted.

Q. (1) What is your position with Caldwell Leasing Limited?

A. President.

Q. (2) Who holds the position of Vice-President?

A. Robert Morgan (brother-in-law).

Q. (3) What business is Caldwell Leasing Limited conducting?

A Leasing of equipment.

Q. (4) Are rental agreements on a single one-way trip, round trip or long term?

A. Round trip or number of days.

continued. ...

- Q. (5) How are arrangements made for rental of equipment?
- A. Phone calls are received at this office by myself Caldwell or my secretary.
- Q. (6) What is the phone number?
- A. 965-1060
- Q. (7) What is the rental rate?
- A. 52¢ per mile (tractor and trailer).
- Q. (8) Who pays cargo insurance?
- A. We don't.
- Q. (9) Does Caldwell Leasing Limited charge sales tax to lessor?
- A. No, but a friend of mine told me the other day, that it should be charged and collected.
- Q.(10) Does Caldwell Leasing hold a Vendor's Permit, issued by Retail Sales Tax Branch?
- A. Yes, number xyz.
- Q.(11) Who drives your leased vehicles?
- A. Drivers from Crash Driver Pool.
- Q.(12) Who operates Crash Driver Pool?
- A. Robert Morgan (brother-in-law).
- Q.(13) Where are these offices located?
- A. Robert's residence is 5th Wheel Avenue, Toronto, phone number 965-7288. It's too small an operation to have offices. Office work for Robert is done at this office. If Robert is not home, calls for drivers would be made here.
- Q.(14) Are drivers paid by mile, hourly rate, salary?
- A. 12¢ per mile, hourly rate \$4.00. Caldwell Leasing invoices for vehicles; Crash Driver Pool for driver and separate charges are received as payment.

continued.....



NOTE: Crash Driver Pool is not Listed in the Bell Canada Directory.

Mr. Caldwell was most co-operative during the investigation; however, expressed concern and stated on two occasions, someone should have advised him of sales tax respecting leasing operation and someone should have advised him if the lease arrangements were not legal.

I suggested to Mr. Caldwell that the courts have registered convictions against Caldwell Leasing Limited for operating without a Public Commercial Vehicle Licence.

Mr. Caldwell provided a list of equipment, owned, operated and registered in the name of Caldwell Leasing Limited (no broker operators):

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Serial Number</u>
1963	Kenworth tractor	c/o	"
1969	White tractor	c/o	"
1973	G.M.C. tractor	JH9670	"
1974	Hayes tractor	113	"
1973	Hayes tractor	113	"
1952	White	Conv.	All are listed
1974	D.H.T. trailer	5 axle	"
1974	City trailer	3 axle	"
1973	Thruway trailer	2 axle	"
1972	Thruway trailer	2 axle	"
1974	D.H.T. trailer	4 axle	"

continued.....

WAKEFIELD SERVICE CENTRE, DIVISION OFMURL IRON AND METAL COMPANY LIMITEDMarkhamNovember 10th

Mr. Jake Snake, Auditor, Retail Sales Tax, attended the offices of Wakefield to audit records relating to service provided by Caldwell Leasing Limited.

Mr. Dave Hook, Director and Secretary Treasurer, Wakefield made the following statements respecting arrangements with Caldwell Leasing Limited:

1. Separate lease signed for each load.
2. Caldwell Leasing Limited provides truck and arranges with Crash Driver Pool for driver.
3. Payment for truck made to Caldwell Leasing.
4. Payment for driver to Crash Driver Pool.
5. Same person picks up both cheques.

signed - J. Snake

November 14th

The writer attended the offices of Wakefield and interviewed:

Mr. David Hook - Director and Secretary Treasurer

Mr. Bad Slice - Shipping Scheduler

Mr. Bad Slice made the following statement, after being cautioned that evidence may be required to be given in court under oath.

I am responsible for arranging transportation services and when service is required I contact Mr. Caldwell at Caldwell Leasing Limited, phone number 965-1060 and advise Wakefield has a load going from point A to point B. Freight rate is based on per cwt. or

continued.....

an agreed rate.

Mr. Caldwell (Caldwell Leasing Limited) provides service as that of a common carrier, providing driver and vehicle. I (Slice) sign lease form on request of Caldwell but it does not mean anything as 52¢ per mile is not correct nor is date as arrangements are made for each trip (one way or return). I do not make arrangements for driver services.

I receive invoicing from Caldwell Leasing Limited and Crash Driver Pool.

If the total of two invoices does not exceed rate per cwt. or agreed rate, I recommend payment.

NOTE: Mr. Slice verified statement with respect to specific moves and acknowledged his signature on rental agreement.

Mr. David Hook confirmed arrangements made by Mr. Bad Slice and approves payment and two cheques are issued; one to Caldwell Leasing and one to Crash Driver Pool.

continued.....

HICKSON STEEL WORKS LIMITED1 Energy Avenue, TorontoNovember 10th

Mr. Jake Snake, Auditor, Retail Sales Tax Branch, attended the offices of Hickson Steel Works Limited, to audit records relating to service provided by Caldwell Leasing Limited.

Mr. Etherington, Office Manager, Hickson Steel Works Limited, stated that to his knowledge, Caldwell Leasing supplies a vehicle and driver to the plant for the shipment of steel. Hickson then receives two invoices; one from Caldwell Leasing and one from Crash Drivers Pool. These invoices are totalled for the month and one cheque is made payable to Caldwell Leasing.

The general ledger accounts payable confirms the payments for July and August to Caldwell Leasing.

Hickson opinion is that they are purchasing a service as Caldwell Leasing arranges for the truck and driver.

signed - Jake Snake

November 28th

The writer attended the offices of Hickson Steel Works Limited, and interviewed:

Mr. R. Hickson, Vice-President

Mr. J. Hickson, Secretary Treasurer

Mr. K. Etherington, Office Manager

continued.....

STATEMENTSMr. R. Hickson

Mr. R. Hickson stated when service is required to move their steel, he contacts Mr. Caldwell at Caldwell Leasing and advises where load is going, weight, size and length and requests trailer be dropped for loading. When trailer loaded, calls Caldwell and advises ready to go. Driver arrives with tractor and bill of lading is issued and away he goes. Main concern is that load goes from origin to destination on time.

Caldwell Leasing makes arrangement for driver. Rate is based on pre-arranged basis and you better speak to my brother J. Hickson. We receive two invoices; one from Caldwell Leasing Limited and one from Crash Driver Pool. I initial for payment. One cheque is issued, payable to Caldwell Leasing. I sign lease because I thought he had to have it to haul for us.

Mr. J. Hickson

Arrangements with Caldwell Leasing are to transport Hickson loads from point A to point B on an agreed rate. Rate includes driver and vehicle. We do not make arrangements for drivers.

Rate is based on comparable rates charges by other carriers providing transportation service on a full load basis.

Arrangements were originally made between Mr. Ennis, President of Ennisteel. (Mr. Ennis has 50% control of Hickson Steel Works Limited).

continued.....



Mr. K. Etherington

Once approval has been given for payment, he issues one cheque in the name of Caldwell Leasing. (Copy of cancelled cheques for specific shipments obtained noting "Payable to Caldwell Leasing", stamped "Deposited to Credit of Payee".)

continued.....

FAIRGRIEVE STEEL AND IRON WORKS LIMITEDNovember 10th 1974

Messrs. Snake and Humphries, Auditors, Retail Sales Tax, attended the offices of Fairgrieve's Steel and Iron Works Limited to audit records relating to service provided by Caldwell Leasing Limited.

Mr. F. Fairgrieve, President, advised the auditors that as far as he was concerned, he hired a service to provide transportation of his goods, from Caldwell Leasing. He made payment to Caldwell Leasing for total amount due; even although he was billed from Crash Drivers Pool.

No invoicing for services for September was found at Fairgrieve Steel. Photo-copies of all invoicing for the whole year and cancelled cheque attached.

T. Humphries

NOTE: Cancelled cheque payable to Caldwell Leasing, stamped on back, "Caldwell Leasing Ltd. Welland, Ontario".

November 18th 1974

The writer attended the offices of Fairgrieve's Steel and Iron Works Limited and interviewed:

Mr. F. Fairgrieve - President

Mr. D. Emery - Plant Manager

continued.....

STATEMENTSMr. F. Fairgrieve

Mr. F. Fairgrieve confirmed the statement made by Messrs. Snake and Humphries and suggested that I speak to Mr. Emery (Plant Manager) as he personally makes the arrangements with Caldwell Leasing.

When specific reference was made to two shipments from Fairgrieve's Steel to New Technology Inc. c/o Greater Podunk Gas Company, Mr. Fairgrieve stated that Fairgrieve had arranged transportation service with Caldwell Leasing on behalf of Podunk Gas Company: however, charges were collect.

Mr. D. Emery

Mr. D. Emery stated he arranges transportation service with Caldwell Leasing (Mr. Caldwell) giving description of load (weight and size) and rate on a pre-arranged basis. It is a contract for carriage of goods on a pre-arranged rate. Does not make arrangement for driver.

continued.....

SUMMARY

1. Statements of persons interviewed and documentation on file, clearly indicates that Caldwell Leasing Limited is providing a for-hire transportation service.
2. Caldwell Leasing Limited  
Statement of Profit and Loss for the Year Ended  
December 31, 1973 (copy attached)  
Financial Statement

Pool Wages - Drivers	\$24,856.30
Benefits	710.36
3. Bell Canada Directory for Toronto and Surrounding Area does not show listing for Crash Drivers Pool. Invoicing and records of Crash Driver Pool are prepared and retained at Caldwell Leasing.
4. Caldwell Leasing Limited registered as a Vendor (Leasing) September with Ministry of Revenue, Sales Tax Branch and filed monthly reports showing zero returns.
5. Caldwell Leasing Limited purchased vehicles tax exempt.

continued.....

6. The Courts have registered convictions against Caldwell

Leasing for operating without a licence:

<u>Date</u>	<u>Place</u>	<u>Particulars</u>	<u>Penalty</u>
May 10	Cochrane	No Extra-Provincial Operating Licence	53.00
July 12	Bowmanville	No P.C.V. Operating Licence	53.00
Sept. 13	Alexandria	No P.C.V. Operating Licence	53.00
Nov. 2	Mississauga	No P.C.V. Operating Licence	50.00
Jan. 15	Bracebridge	No Extra-Provincial Operating Licence	50.00
June 23	Mississauga	No Extra-Provincial Operating Licence	50.00
Aug. 6	Brampton	No P.C.V. Operating Licence	50.00

#### CONCLUSION

Caldwell Leasing Limited is operating commercial vehicles on a highway for the transportation for compensation of goods of another person, not being the holder of an operating licence.

#### COURSE OF ACTION

##### Options:

- i) Cancellation of plates and permits pursuant to  
Section 27 of The Highway Traffic Act,

OR

- ii) Authorize prosecution for contravention of The  
Public Commercial Vehicles Act and The Motor  
Vehicle Transport Act (Canada).

continued.....



Recommendation:

Cancellation of plates and permits pursuant to  
Section 27 of The Highway Traffic Act.

EXHIBITS

- Exhibit 1. Certificate of Incorporation  
Annual Return of Caldwell Leasing Limited
- Exhibit 2. Abstract of Convictions  
on Caldwell Leasing Limited
- Exhibit 3. Statement of Profit and Loss For the year  
Ended December 31,  
for Caldwell Leasing Limited
- Exhibit 4. List of Equipment  
provided by Caldwell Leasing Limited
- Exhibit 5. Ministry of Consumer and Commercial Relations  
Partnership or Business Registration  
on Crash Drivers' Pool  
Date of establishing partnership or business  
September
- Exhibit 6. Bell Canada - Toronto and Surrounding Territory
- Exhibit 7. (a) Report of Inspection 1 - dated September  
(b) Lease Investigation Form, Driver Interviewed  
dated September  
(c) Caldwell Leasing Limited Rental Agreement  
number 1053, dated September  
(d) The Jones Steel Corporation Limited bill of  
lading number 09203  
(e) Wakefield Iron and Metal Company bill of lading  
dated September 11,  
(f) Crash Driver's Pool invoice number 1609  
dated September 11,  
(g) Caldwell Leasing Limited invoice number 1609,  
dated September 11,
- Exhibit 8. (a) Report of Inspection 2 - dated September  
(b) Lease Investigation Form, Driver interviewed  
dated September  
(c) Caldwell Leasing Limited Rental Agreement  
number 1057, dated September  
(d) The Jones Steel Corporation Limited bill of  
lading, number 15265  
(e) Wakefield Iron and Metal Company bill of lading  
dated September 12,  
(f) Crash Driver's Pool invoice number 1604,  
dated September 12,  
(g) Caldwell Leasing Limited invoice number 1604  
dated September 12,

continued.....

- Exhibit 9.
- (a) Report of Inspection 3 - dated July
  - (b) Lease Investigation Form, Driver Interviewed dated July
  - (c) Crash Driver's Pool invoice number 1516 dated July 20
  - (d) Caldwell Leasing Limited invoice number 1516 dated July 20, 1974
  - (e) Wakefield Iron and Metal Company bill of lading, dated July 20, 1974, shippers number 10740
  - (f) Wakefield Iron and Metal Company bill of lading, dated July 20,
  - (g) Wakefield Iron and Metal Company bill of lading, dated July 21, shipper's number W6616

- Exhibit 10.
- (a) Report of Inspection 4 - dated August
  - (b) Lease Investigation Form, Driver Interviewed dated August
  - (c) Caldwell Leasing Limited Rental Agreement number 959, dated August 9, 1974
  - (d) Wakefield Iron and Metal Company bill of lading, dated August 10, shipper's number 32372
  - (e) Caldwell Leasing Limited invoice number 1542 dated August 10,
  - (f) Crash Driver's Pool invoice number 1542 dated August 10, 1974

- Exhibit 11.
- Copy of Investigation completed and signed by Jake Snake, Auditor, Retail Sales Tax Branch including copies of Wakefield Iron and Metal Company's cancelled cheques numbers 232 and 335

- Exhibit 12.
- (a) Report of Inspection 5 - dated September
  - (b) Lease Investigation Form, Driver Interviewed dated September
  - (c) Fairgrieve Steel and Ironworks Limited bill of lading, dated September 14,
  - (d) Fairgrieve Steel and Ironworks Limited shipping document, dated September 14,
  - (e) Fairgrieve Steel and Ironworks Limited bill of lading, dated September 14,
  - (f) Caldwell Leasing Limited invoice number 1585 dated September 14,
  - (g) Caldwell Leasing Limited Rental Agreement number 1038, dated September 14,

- Exhibit 13.
- (a) Report of Inspection 6 - dated September
  - (b) Leasing Investigation Form, Driver Interviewed
  - (c) Fairgrieve Steel and Ironworks Limited bill of lading, dated September 21, 1974
  - (d) Caldwell Leasing Limited Rental Agreement number 1049, dated September 20,
  - (e) Caldwell Leasing Limited invoice number 1597 dated September 21, 1974
  - (f) Fairgrieve Steel and Ironworks Limited shipping document

continued....

- Exhibit 14. Copy of Investigation completed and signed by  
Humphries, Auditor, Retail Sales Tax Branch
- Exhibit 15. (a) Report of Inspection 7 - dated August  
(b) Lease Investigation Form, Driver Interviewed  
dated August  
(c) Caldwell Leasing Limited Rental Agreement  
number 984, dated August 28,  
(d) Hickson steel Works Limited bill of lading  
dated August 30,  
(e) Crash Driver's Pool invoice number 1560,  
dated August 30, 1974  
(f) Caldwell Leasing Limited invoice number 1560  
dated August 20, 1974  
(g) Copy of Hickson Steel Works Limited cancelled  
cheque number 0001743
- Exhibit 16. (a) Report of Inspection 8 - dated August  
(b) Lease Investigation Form, Driver Interviewed  
dated August  
(c) Caldwell Leasing Limited Rental Agreement  
number 1022, dated August 28, 1974  
(d) Caldwell Leasing Limited invoice number 1584  
dated August 29,  
(e) Hickson Steel Works Limited bill of lading  
dated August 29,  
(f) Crash Driver's Pool invoice number 1584  
dated August 29, 1974  
(g) Hickson Steel Works Limited cancelled cheque  
number 0001762
- Exhibit 17. Copy of Investigation completed and signed by  
Auditor, Retail Sales Tax Branch
- Exhibit 18. Balance Sheet as at December 31, for Caldwell  
Leasing Limited completed by Joe Jones C.G.A.,  
Public Accountant
- Exhibit 19. Retail Sales Tax Current Vendor Statement of Accounts  
dated July on Caldwell Leasing Limited.





APPENDIX - N

ce of the  
ister

Ministry of  
Transportation and  
Communications

416-935-2101

Ferguson Block  
Queen's Park  
Toronto Ontario

January 27, 1977

The Honourable Otto Lang  
Minister of Transport  
Tower C  
Place de Ville  
Ottawa, Ontario K1A 0N5

Dear Mr. Minister:

I am writing to thank you for your letter of December 24, 1976, in which you propose to meet with me and my provincial counterparts to discuss your proposals relating to the regulation of extra-provincial motor carriers. I am most pleased to accept your invitation for such a meeting, in Ottawa on February 11, 1977.

At this time, I would also like to summarize my views regarding your proposals, so that our meeting might be as productive as possible. They are as follows:

1. Ontario believes that the motor carrier (bus and truck) industries in Canada are functioning in a generally satisfactory manner.
2. It is Ontario's experience that these industries and the governments responsible for their regulation face practical problems from time to time, and that there are always opportunities for both government and industry to improve the functioning of the highway carrier systems.
3. Ontario has the impression that many of the currently perceived "problems" fall into one or more of the following categories:
  - a) "problems" which are not generally agreed upon by the affected parties as being real hindrances to the operation of the current system.
  - b) "problems" which are not within federal jurisdiction.
  - c) "problems" which are not amenable to easy or inexpensive solution.

- d) "problems" which can be resolved by co-operation within the existing delegation of the Motor Vehicle Transport Act.
4. Ontario is prepared to work with all interested parties in reaching a common definition of problems, and in identifying opportunities for making improvements.
  5. Ontario believes that the Canadian Conference of Motor Transport Administrators is an effective forum for the resolution of problems of mutual concern among the provinces, which might be of interest to the Federal Government. Ontario would be pleased to accept more active Federal participation in the Conference and, in particular, would welcome a continuing role for the Federal Minister in the presentation and consideration of Federal concerns and proposals at the Annual Conference of Ministers Responsible for Motor Vehicle Administration.
  6. Ontario believes that co-operation between the levels of government may eventually lead to joint definition of the needs for legislative change at the provincial and/or federal levels; but, at this time, any unilateral Federal action would be premature and unacceptable.
  7. Ontario is concerned that any changes be carefully assessed in advance, to determine their advantages and to ensure that any resulting disruptive effects will not outweigh those advantages. Ontario does not believe that the current Federal proposals have been evaluated in terms of either of these conditions.
  8. Ontario is opposed to the current Federal legislative proposals which in its view would give the Federal Government the authority to assume far reaching policy control of the motor carrier industries. Rather, Ontario believes that continued provincial control of the motor carrier industries is essential, in that:
    - a) The Federal Government controls the air, rail and water modes of transportation.
    - b) The movement of passengers and goods by motor carrier is predominantly intra-provincial in character and importance.
    - c) There is no assurance that it would be feasible or practical to separately govern the intra-provincial and extra-provincial operations of motor carriers, by separate levels of government.

- d) It is necessary and desirable to integrate the regulation of motor carriers with the provincial responsibilities for highway infrastructure, driver certification, vehicle licensing and inspection, the rules of highway behaviour, and the retail taxation of fuel and equipment.
9. Ontario fears that the practical implementation of any Federal proposal for policy control of motor carriers would inevitably result in complex new regulatory requirements, similar to those established for rail and air transportation, which would not be appropriate for the motor carrier industries.
  10. Ontario believes that the Federal Government, in making its current proposals, should justify its definition of the national interest as it relates to the motor carrier industries, and demonstrate how that interest cannot be met within the existing delegation of the Motor Vehicle Transport Act.

In closing, I would suggest that it is this last point which is the central issue involved in your initiative, and that you have not addressed it in a manner which might justify your proposals in the eyes of your provincial colleagues.

In accordance with my practice heretofore, I am taking the liberty of forwarding copies of this letter to my colleagues in other provinces, in order that they may be aware of my views.

With kindest regards, I remain,

Yours sincerely,

OSCAR LEONARDY  
THE HONOURABLE JAMES SNOW, M.P.P.

James Snow  
Minister

cc: Provincial Ministers responsible for Motor Vehicle Administration (list attached).



CLASSIFICATION OF PUBLIC COMMERCIAL VEHICLES ISSUED ANNUALLY SINCE 1928

Class	1928	1929	1930	1931	1932
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.
A	325	945	283	1118	220
B					975
C					227
D					104
E					822
					75
					1348
					295
					915
					1059
					213
					134
					450
					82
					232
					1173
(Livestock, Farm and Dairy Products)					
	325	945	283	1118	372
					152
					180
					790
					4010
					1938
					3397

Class	1933	1934	1935	1936	1937
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.
A	232	1383	230	1580	247
B	133	173	119	147	126
C	353	710	356	749	430
D	115	330	129	357	149
E	1406	1639	1132	1341	1266
F					1508
G					454
H					100
					539
					1328
					96
					2096
					173
					104
					699
					106
					391
					670
					1899
					246



Class 1938 1939 1940 1941 1942

	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	285	2287	280	2426	271	2751	263	3314	243	3145
B	51	73	40	56	35	54	38	50	34	49
C	686	1377	709	1440	668	1475	696	1518	665	1438
D	111	403	166	541	189	628	212	734	200	666
E	623	738	629	806	613	847	677	832	630	832
F	1870	2185	1805	2191	1654	2333	1891	2542	1764	2356
H	124	278	129	284	130	297	134	328	135	331
	3750	7341	3758	7744	3560	8385	3911	9318	3671	8817

Class 1943 1944 1945 1946 1947

	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	245	3282	248	3156	251	3290	259	3701	275	4027
B	35	53	39	52	38	53	42	57	44	53
C	672	1366	688	1348	714	1513	751	1673	787	1834
D	212	655	232	561	213	547	248	712	269	922
E	698	829	654	846	656	834	669	862	710	881
F	1689	2035	1681	1913	1650	1928	1923	2383	2049	2926
FS									104	120
H	136	332	131	321	135	359	145	422	152	464

3687 8552 3673 8197 3657 8524 4037 9810 4390 11227

Class	1948		1949		1950		1951		1952	
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	256	4390	255	4861	246	5605	223	6084	229	6548
B	42	66	41	67	41	69	39	71	35	70
C	741	1860	689	1868	647	1997	596	2092	608	2132
D	295	1026	316	1181	357	1515	387	1765	358	2172
E	689	921	674	945	722	975	758	959	719	997
F	2289	3026	2474	3277	2552	3489	2712	3504	2913	4242
FS	182	278	278	395	315	451	318	494	330	515
H	149	495	154	508	153	563	152	609	158	681
K					58	118	69	134	81 (by (Trip permits)	176
L	4643	12062	4881	13102	5091	14782	5254	15712	5452	17533

21

Class	1953		1954		1955		1956		1957	
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	229	7292	217	7725	209	8286	206	9328	203	9844
B	38	73	39	76	38	80	35	96	32	96
C	598	2214	565	2306	536	2419	545	2659	505	2922
D	471	2563	477	2510	449	2426	503	3206	581	4089
E	724	986	737	1008	716	1019	715	1011	679	1036
F	3300	5032	4034	5929	4666	7103	5091	7780	4751	8008
FS	353	569	361	605	354	644	364	716	354	698
H	150	724	150	753	138	746	140	850	144	885
K	95	220	97	241	102	257	114	287	126	320
L	25s/tPermit		34s/tPermit		37s/tPermit		44s/tPermit		49s/tPermit	
X					147	736	378	1283	548	1790

5983      .19673      6771      21153      7392      23716      8135      27216      7972      29688

Class	1958		1959		1960		1961		1962	
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	201	9812	184	11143	183	11599	187	11780	188	12254
B	32	117	30	132	30	104	28	99	25	100
C	476	3256	438	3726	430	3851	443	3692	407	3995
D	670	4417	742	4789	817	5055	862	5386	933	5479
E	699	1064	669	1085	667	1038	679	1129	691	1123
F	4962	8332	5457	8778	5001	9051	5291	9247	5299	9927
FS	342	712	337	659	337	724	338	744	349	779
H	151	939	149	958	158	1061	159	1096	158	1175
K	126	342	134	375	145	406	147	406	143	430
L	51s/t Permit		55s/t Permit		61s/t Permit		64s/t Permit		57s/t Permit	
X	600	2511	675	3153	699	3497	749	3843	781	3314
	8310	31502	8870	34798	8528	36446	8947	37422	9031	38576

Class	1963		1964		1965		1966		1967	
	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates
A	233	13021	240	14823	253	16239	260	16679	272	17506
B	23	75	22	78	22	88	22	93		
C	388	4035	378	4276	359	4524	317	4860	214	4805
D	937	5813	1086	5763	999	5965	1096	5952	1080	5235
E	637	1111	635	1108	602	1093	554	1059	444	1038
F	5186	10318	5354	11027	5551	11845	5514	12274	5123	12942
FS	343	806	345	853	345	892	351	874	330	876
H	187	1288	189	1384	187	1467	187	1552	194	1647
K	143	434	154	479	148	491	137	508	137	525
L	58s/t Permit		55s/t Permit		58s/t Permit		55s/t Permit		61s/t Permit	
X	805	4413	828	4671	859	5497	860	6318	874	6872
	8940	41314	9286	44462	9383	48101	9353	50169	8729	52446

	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	Plates	Op'trs.	*Plates	Op'trs.	*Plates
A	275	18843	277	20025	303	20445	308	11566	318	12559
C	206	4625	197	4951	190	4793	190	3663	179	3836
D	1144	6784	1170	7328	1162	7652	1177	6849	1190	7325
E	409	1072	386	1046	343	1032	315	803	268	816
F	540	13173	5632	13299	5677	13440	6218	10163	5927	9955
FF	4	-	18	-	27	-	34	-	40	-
FS	30	886	319	864	320	894	308	592	295	600
H	109	1650	187	1686	183	1705	180	1940	172	1598
K	138	538	137	542	131	583	130	361	130	351
L	66 s/t Permit	-	74 s/t Permit	-	76	-	81	-	84	-
R	-	-	-	-	-	-	-	-	-	-
X	887	7152	921	8216	941	8815	968	3439	992	3733
T	-	-	-	-	4	-	67	116	70	672
Conversion Units	-	-	-	-	-	-	-	511	-	358
(All Classes)	-	-	-	-	-	-	-	-	-	-

Class	1973	1974	1975							
	Op'trs.	*Plates	Op'trs.	*Plates	Op'trs.	*Plates	Op'trs.	*Plates	Op'trs.	*Plates
A	338	13155	357	13593	355	13544				
C	176	4299	166	4282	157	4061				
D	1240	7820	1322	8082	1185	8770				
E	263	768	233	728	212	698				
F	6184	10258	6392	10342	6306	10340				
FF	29	-	32	-	9	-				
FS	274	573	260	554	254	567				
H	170	1641	157	1674	154	1618				
K	130	346	136	404	137	489				
L	83	-	96	-	105	-				
R	-	-	-	-	1669	-				
X	1035	3554	1099	3797	1063	4453				
T	83	729	87	766	92	981				
Conversion Units	-	135	-	204	-	100				
	10005	43278	10337	44426	11698	45621				

\* Includes 3, 6, 9 and 12 month licences.

N.B. 1971 to 1975 decrease in vehicle licences is due to the exclusion of trailers from licensing requirements.





## APPENDIX Q

Q.1 Concentration of ownership

There are a number of ways that concentration within the trucking industry may be measured. One can examine a percentage of the larger firms which i) account for a certain percentage of total revenue, ii) own or operate a certain percentage of total power units, or of all vehicles, iii) control some percentage of overall capacity within the industry.

There is very little reliable data in any of those areas.

Sources we have examined are:

- Statistics Canada
- Ontario Trucking Association (1)
  - i) quoting Statistics Canada Survey, 1974 (2)
  - ii) Ship by Truck Directory (3)
  - iii) self derived data
- Ministry of Transportation and Communications (4)
  - i) Economics Policy Office
  - ii) Highway Carrier Office
- Ministry of Revenue (particularly regarding foreign ownership)
- Ontario Highway Transport Board (particularly regarding foreign ownership)

Of particular relevance to the question of concentration were the Statistics Canada figures provided in the Ontario Trucking Association brief. But there are significant problems.

Q.1.1      Number of Vehicles

We present in table 1 extrapolations from data prepared by Statistics Canada. It must be noted that

- 1) the data relates to 1974
- 2) it does not represent the entire industry (Ontario based, only 4082 of approximately 9,000 firms); (Ontario Trucking Association members only 811 of approximately 1,500).
- 3) it does not reflect Public Vehicle carriers of express freight.

We have assumed for the purpose of the analysis that it does represent enough of the Class I carriers either based in Ontario or which are Ontario Trucking Association members such that the inclusion of any which were left out would not significantly alter the percentages derived.

EQUIPMENT OPERATED

ONTARIO BASED CARRIERS CLASS 1  
# firms 59 of 4,082 firms (assumed)

OTA MEMBERS CLASS 1  
# firms 69 Class 1; Total 811 firms

Vehicle type	Owned	%	Leased	%	Vehicle type	Owned	%	Leased	%
Straight	3,006 of 13,716	21.9	216 of 712	30.3	Straight	4,514 of 8,044	56.1	244 of 354	68.9
Tractor	6,300 of 12,478	50.5	2,108 of 2,671	78.9	Tractor	8,753 of 13,003	67.3	3,066 of 3,458	86.7
Semi trailers	13,453 of 21,741	61.8	3,402 of 3,964	85.8	Semi trailers	21,252 of 27,539	77.5	3,329 of 3,794	87.7
Other Rev Equipment	2,158 of 5,252	41.1	426 of 600	71.0	Other Rev Equipment	3,548 of 5,950	59.6	426 of 512	83.2
TOTALS	24,917 of 53,187	46.8	6,152 of 7,947	77.4	TOTALS	38,067 of 54,536	69.8	7,065 of 8,118	87.0

	TOTAL # OPERATED (Owned & leased)	%	TOTAL # OPERATED (Owned & leased)	%
Straight	3,222 of 14,428	22.3	4,758 of 8,398	56.7
Tractor	8,408 of 15,149	55.5	11,819 of 16,461	71.8
Semi trailers	16,855 of 25,715	65.5	24,581 of 31,333	78.4
Other	2,584 of 5,852	44.2	3,974 of 6,462	61.5
TOTAL	31,069 of 61,144	50.8	45,132 of 62,654	72.0
TOTAL W/O others and straights i.e. tractors and semi trailers	25,263 of 40,864	61.8	36,400 of 47,794	76.3

Some Facts which Emerge from Table 1

Re Ontario Based Carriers

- 1.4% of the firms reporting own or operate 50.8% of all revenue generating mobile equipment and 61.8% of tractors and semi-trailers.

Re Ontario Trucking Association Members

- 8.5% of the firms reporting own or operate 72.0% of all revenue equipment and 76.3% of tractors and semi-trailers.
- Since in both surveys we assume that all Class I carriers reported, if the survey were to include all firms in business the percentage of all firms represented by Class I carriers would be far less.
- For example: 59 represents less than 1% of all Ontario licensed operators.
- It is clear that Class 2, 3, 4, 5 and "O" operators tend to operate proportionately more straight trucks and "other" revenue equipment in their fleets. Thus, while adding in additional operators will mean the addition of more tractors and semi-trailers, they will be proportionately less than the number of straight trucks added.
- It could be concluded that approximately 0.7% of those operators based and licensed in Ontario operate approximately 60-70% of all tractors and semi-trailers in the province.

The analysis begins to break down at this point, but it could be assumed since tractor - semi-trailer represents more capacity than a straight truck less than 1% would control or provide some 70-80% of the available truck carrying capacity on Ontario highways. This would be supported to the extent (unquantified) that any of the 59 Class I carriers also own or control some of those operators which are not Class I.

One brief stated:

"while (1971) Public Commercial Vehicle registrations as a percentage of total registrations was small (7.5%) and roughly in the same proportions as in 1975, Public Commercial Vehicle registrations of heavy vehicle registrations were very much more significant, 49% of all tractors, 15 ton gross vehicle weight and over 74.1% of all trailers 16 tons and over." (6)

The Ministry of Transportation and Communications' Trucking Study stated: "using 1971 data, there were 326 (Class A) carriers operating 13,700 power units. (There were 30,120 reported as being totally available) of these 326 companies, 12 operated 5,060 units (37%). (7)

#### Q.1.2 Revenues

Turning to revenues, the total revenues earned by the Ontario domiciled for-hire industry which reported to Statistics Canada in 1974 was \$1,206,803,000. Of this revenue, \$662,360,000 was earned by the 59 Class I firms. (i.e. - the 59 largest). (8)

It is stated then, that the 59 largest Ontario based carriers earned in 1974 54.9% of all revenues. (An average of \$11,226,440 per firm).

The Ministry of Transportation and Communications in the Trucking Study stated "the revenue generated per power unit was found to be fairly constant among companies and range from \$35,000 to \$40,000 per power unit." (9)

This is not consistent with our finding that 59 firms operated 39.8% of all power equipment, yet earned 54.9% of the revenue. It is fairly consistent with our tabulations, that 59 firms operated approximately 50.8% of all revenue equipment. Thus, assuming constant return/unit on average, those same firms could be expected to (have) earned approximately the same percentage of total revenue (it turns out to be 54.9% above) .



Therefore, taking 59 firms as a total of all firms, it can be concluded that less than 1% of all firms licensed in Ontario operate less than 40% of all power equipment and yet earn more than 54% of total revenue. It would appear that returns per power unit are not equal between firms.

The number of firms in other classes reporting:

Class 2 - 120; Class 3 - 427; Class 4 - 717; Class 5 - 1461;  
Class 0 - 1298; Total - 4023

Those 4,023 firms earned in 1974 \$544,443.000 in revenue (an average of \$135,332 per firm).

We explore some further relationships by calculations shown in Tables 2 and 2a.

TABLE 2

## EQUIPMENT AND REVENUES OF ONTARIO BASED CARRIERS

REPORTING TO STATISTICS CANADA, 1974

ITEM	CLASS 1			CLASS 2, 3, 4, or 5, 0			
Number of firms	59			4,023			
% of firms reporting	1.4			98.6			
Total Revenue	\$662,360,000			\$544,443,000			
% of Revenue	54.9			45.1			
Average Revenue/firm	\$ 11,226,440			\$ 135,332			
Equipment totals	31,069			30,075			
% of Total	50.8			49.2			
# & % of Straights/Rev/Unit	3,222	22.3	\$204,938	11,206	77.7	\$48,585	
# & % of Tractors/Rev/Unit	8,408	55.5	78,777	6,741	44.5	80,766	
# & % of all Power Units/ Rev/Unit	11,630	39.3	56,953	17,947	60.7	30,336	
# & % of all semi- trailers/Rev/Unit	16,855	65.5	39,298	8,860	34.5	61,449	

Source: derived from Statistics Canada  
data presented in OTA Brief.

FLEET COMPOSITION

REVENUE EQUIPMENT AND REVENUES GENERATED

CARRIERS REPORTING TO STATISTICS CANADA 1974

TABLE 2a

% of all equipment (31,069 units) operated by Class 1			Revenue generated by equipment assum- ing equal & constant return per unit	% of all equipment (30,075 units) operated by other classes		Revenue generated by equipment assum- ing equal & constant return per unit
Straights	3,222/ 31,069	10.4	\$ 68,885,440	11,206/ 30,075	37.2	\$202,532,790
Tractors	8,408	27.0	178,837,200	6,741	22.4	121,955,230
Semi- trailers	16,855/ 31,069	54.3	359,661,480	8,860	29.5	160,610,680
Other Units	2,584/ 31,069	8.3	54,975,880	3,268/ 30,075	10.9	59,344,287
TOTALS	31,069	100.0	662,360,000	30,075	100.0	544,442,987*

\* error of \$13.00 due to rounding.

Source: derived from Statistics Canada  
data presented in OTA Brief.

The 59 largest firms operate on average 527 pieces of revenue equipment each. Other Class carriers (smaller) operate an average of 7.0 pieces each. This gives one a significantly different impression of the makeup of the industry than, for example, the statement that "only 35 of our members operated in excess of 100 vehicles in 1975." It is consistent with the comment - "By contrast - 931 members or 72% operated 10 vehicles or less." (10)

If we assume that there is a relationship between power equipment and revenue generation, we can compare the performance of Class 1 carriers with other carriers.

The large 59 firms account for 54.9% of total revenue and earn approximately \$11,226,000 per firm. The other firms, (over 99%) earn 45.1% of total revenue and earn an average of \$135,332 per firm.

This analysis is distorted by the comparison of unlike carriers. For example, some (unknown) proportion of the firms reporting would be aggregate haulers. It is inappropriate if not totally misleading to compare the revenue generated (or expected or needed) by such a carrier with the revenue generated (etc.) by a large Class A carrier.

Regardless, there is not a constant relationship between power equipment and revenues across the industry. The largest firms average \$56,953 revenue/power unit; the others average \$30,336. (If one based revenue on tractors alone, the comparison is much more equal. (Class 1 - \$78,777; others - \$80,766.) To drive meaningful results, one should examine net revenues per power unit.

If we assume to measure concentration in terms of revenues, it is clear that a small percentage of Ontario based firms earn a relatively large share of revenue.

Q.2 Foreign Ownership

The Committee encountered much difficulty in trying to come to grips with the question of who owns what in the trucking industry. Some corporate inter-relationships are well known, others are not.

The Ontario Highway Transport Board provided to the Committee, 1) a list of carriers in Ontario which are controlled by other than Canadian companies, and 2) a list of those firms which hold more than one operating licence in Ontario by reason of a parent controlling at least one subsidiary. (11)

As reported by the Board, there are approximately 29 Ontario operating companies, licensed under The Public Commercial Vehicles Act which are owned by 16 foreign companies.

The 17 companies licensed for general freight own or operate approximately 761 straight trucks, 1961 tractors and 5,346 trailers.

Based on this information, the industry in Ontario is clearly not dominated by foreign concerns.

The Ministry of Transportation and Communications in the Truck Transportation Study indicated the following with regard to common carriers:

TABLE 3 (12)

<u>Ownership/Base</u>	<u>% of total power units owned by non Ontario concerns</u>	<u>% of total power units based in jurisdictions other than Ontario</u>
Non-Ontario	34.3	24.9
U.S.A.	18.9	15.4
Other countries	3.8	N/A
Other provinces	11.6	9.5



Table 4 shows the number of "truck transport" corporations listed on the 1974 tax roll of the Ontario Corporations Tax Branch. (13)

The Ministry of Revenue, in providing these figures commented:

It can be seen that some 909 transport corporations, or about 68.1% of the total such corporations on the tax roll in 1974 reported that they were "Canadian controlled private corporations". Many of the corporations in this particular category had a strong incentive to report this information to the Corporations Tax Branch in view of the announcement of the "small business tax credit" in the 1974 Ontario Budget.

On the other hand, except for the purpose of administering the small business tax credit, the Corporations Tax Branch had no reason to question the information provided by corporations, whether large or small relating to their public or private status, or to their Canadian control status. Thus, some 367 corporations (about 27.5% of the total) did not report this type of information.

It is probable that at least some of these 367 nonreporting corporations would be Canadian-controlled (public or private) corporations which omitted to provide the information, either because they did not qualify for the tax credit, or because they had no taxable income against which to apply the tax credit.

In the case of the 16 corporations reporting themselves as 'public corporations', it may be assumed that these would tend to include the largest trucking enterprises, some of which may well have been Canadian-controlled.

The Table also shows an alternative breakdown of these data on the basis of the control of voting shares. Some 821 trucking corporations (61.5% of the total) reported that at least a majority of their voting shares were under Canadian control, including 813 corporations with 100% of their voting shares in Canadian hands.

Again, except where a small business tax credit was to be claimed, the Branch had no reason to question the information provided by corporations on the subject of voting control and, indeed some 495 corporations (about 37.1% of the total) omitted such information.

Thus, having due regard for the incomplete nature of the information and the significant number of corporations not reporting, one might draw the rough conclusion that about two-thirds or more of the truck transport corporations filing corporations tax returns to Ontario in 1974 were Canadian-controlled.

TABLE 4

NUMBER OF "TRUCK TRANSPORT" CORPORATIONS  
LISTED ON THE 1974 TAX ROLL  
ONTARIO CORPORATIONS TAX BRANCH

		<u>Number of Corporations</u>
1. Total number of corporations classified as "truck transport" corporations		<u>1,335</u>
2. Number of corporations specifying whether public or private		
Public corporations		16
Private corporations		
Canadian controlled	909	
Other control	<u>43</u>	952
Not specified		<u>367</u>
		<u>1,335</u>
3. Number of corporations specifying percentage of Canadian control of voting shares		
100% of voting shares under Canadian control		813
50% to 99% of voting shares under Canadian control		8
Less than 50% of voting shares under Canadian control		19
Not specified		<u>495</u>
		<u>1,335</u>

Note (1) The total of 1,335 "truck transport" corporations does not include a further 31 corporations classified as "moving and storage" corporations, whose principal business was the moving and storage of "used goods, uncrated".

This does not, of course, reveal what proportion of the industry as a whole was Canadian-controlled if respondents' data had been weighted by their assets, ton-miles, volume of sales, or other measures of corporate size. Presumably, the larger and more diversely-held corporations tended to be in the "not specified" category, since these corporations would not, in any event, have qualified for a small business tax credit.

Our records relating to other provincial taxes, in particular the gasoline tax and the retail sales tax, do not contain information likely to be relevant to the question of foreign control in the trucking industry.

The Ministry of Revenue in discussing the alternate sources of data stated:

The Gasoline Tax Branch has records relating to those inter-provincial and international trucking enterprises that are registrants under The Motor Vehicle Fuel Tax Act. However, these records do not provide any meaningful guidance on the degree of "foreign control", except to the extent that most trucking enterprises having an out-of-Canada business address for tax-reporting and record-keeping purposes might reasonably be presumed to be controlled by non-Canadians. Likewise, any trucking enterprises that are proprietorships or partnerships having a Canadian business address could be assumed to be controlled by residents of Canada.

On the other hand, where registrants are corporations with a Canadian business address for tax-reporting and record-keeping purposes, the residence or citizenship of those exercising ultimate control of such corporations is not required to be shown in our records.

Our records relating to other provincial taxes, in particular the gasoline tax and the retail sales tax, do not contain information likely to be relevant to the question of foreign control in the trucking industry.

On the basis of the evidence before the Committee, we do not find that the Ontario for-hire trucking industry is inordinately controlled by non-Ontario or non-Canadian concerns.

Footnotes Appendix - Q

- (1) See OTA Brief - particularly Appendices 4 and 5.
- (2) The Statistics Canada figures are based on 4,082 firms reporting to it in 1974. This does not represent all the firms based in Ontario, due to unusable replies and Statistics Canada definitions of what constitutes a trucking concern.
- (3) Ship by truck indicates in most cases (with one or two major omissions) the numbers of vehicles (straight, tractors, trailers) operated by each firm listed. It is, however, not possible to define how many of the vehicles are operated in and for the Ontario market or how many are dedicated to A, C, D operations, etc. where the carrier holds more than a single authority.
- (4) MTC figures on the number of firms with authority is not exact to the extent that one firm may corporately control another firm. For example, CN is listed as one firm. So is Hoar, Husband and others as separate firms, but these are in fact owned by CN Transport). The extent of such corporate linkage is difficult to quantify.
- (5) MTC Computer Program - PCV File - January 1977
- (6) OTA Brief page 9
- (7) MTC Truck Transportation in Ontario Phase 1, page 60
- (8) derived from Stats Canada figures as Contained in OTA Brief, Appendix 4
- (9) MTC Truck Transportation in Ontario Phase 1, page 60
- (10) OTA Brief Page 21
- (11) OHTB in letter to BBC July 30, 1976
- (12) MTC Truck Transportation in Ontario Phase 1 pages 63-64. Based on 30,120 power units being available to the province. Since only obvious inconsistencies were discounted, some error remains. Companies owned by the Railways were considered to be owned in other provinces.
- (13) Revenue to BBC July 22, 1976

## APPENDIX R PART I

2.3 MODE USE

The use of the various modes of freight transport is, to an extent, dependent upon the conditions in the particular urban area under study. However, in the case of internal freight flow (i.e. freight movements where both the origin and destination of the consignment is in the same urban area), the motor truck dominates. In Melbourne, for example, internal movements by rail were less than 1% of the mass of those by truck (Ogden, 1975). Even in New York, where extensive use is made of barge, 77% of the mass of internal freight is carried on trucks (Wood, 1970). Thus, "an analysis of urban goods movement is essentially an analysis of truck transport within cities, given existing institutions and technology" (Hedges, 1971a).

With external freight flows, i.e. those which involve the movement of goods in or out of an urban area across the urban boundary, generalizations are not possible. The actual usage of the various modes depends firstly upon the modes that are available; this may in turn depend upon geographic factors such as whether the city is located on a coast-line or inland waterway. The commodities which are imported or exported, and the length of haul will also affect mode use, since the relative advantage of one mode over another varies with both of these (Hutchinson, 1974b)

The total mass of imports exceeds that of exports; a large urban area is a net consumer of goods by mass since it requires the importation of food and raw materials to survive. Secondly, the truck's share of exports is higher than its share of imports. Imports are more commonly bulk commodities like food, oil and raw materials which are suited to bulk modes like ship and rail, while



exports are more commonly processed products, many of which are more suited to the road mode.

Number of Trucks

For large U.S. cities, with populations in excess of one million, the truck ownership rate is fairly constant at about 25-30 trucks per thousand population (WSA, 1969). For smaller cities, the rate increases because of the increased incidence of truck ownership for private transportation. Canadian rates appear to be comparable. In Calgary in 1972, for example, the truck ownership rate was 37 trucks per thousand population. (TDA, 1974).

Truck Types

In terms of numbers of trucks, the urban truck fleet is dominated by small trucks. The following table shows the proportion of pick-ups and panel vans in the total urban truck fleet for selected cities.

	<u>Pick-up</u>	<u>Panel Vans</u>	<u>Other</u>	<u>Total</u>
New York (Wood, 1970)	20	21	59	100%
Calgary (TDA, 1974)	18	42	40	100%
Melbourne (Ogden, 1975)	31	35	34	100%
Atlanta (WSA, 1969)	48	13	39	100%
Cincinnati (WSA, 1969)	40	15	45	100%

These data are not necessarily comparable, because of definition inconsistencies, but they clearly indicate that over half of the urban truck fleet is made up of light trucks. As will be seen later, many of these are primarily used for passenger transport, not for freight.

The dominance of the truck fleet by light trucks is also shown by the distribution of gross vehicle weights. The following table is based upon a mail-back questionnaire issued in the three cities (Department of Environment, 1974).

<u>Weight Class (Lbs.)</u>	<u>Toronto</u>	<u>Calgary</u>	<u>Halifax</u>
0-6000	41	43	52
6,001-10,000	18	29	12
10,001-19,500	11	8	10
19,500-33,000	16	10	20
over 33,000	14	10	6
	100%	100%	100%

Although the heavier trucks are a small proportion of the total fleet, they carry a significant proportion of the freight task. For example:

Truck Ownership

Truck ownership may be broadly divided into four classes.

	<u>Commercial For-Hire</u>	<u>Private Commercial</u>	<u>Personal Use</u>	<u>Gov't.</u>	<u>Total</u>
Calgary (TDA, 1974)	17	44	33	6	100%
11 U.S. Cities (WSA, 1969)	6	57	34	3	100%
Melbourne (Ogden, 1975)	13	54	27	6	100%
Toronto (Dept. of Environ- ment, 1974)*	14	71	15	-	100%
Halifax (Dept. of Environ- ment, 1974)*	11	67	22	-	100%

\* Government trucks included in private commercial.

It can be seen that about one-half of all urban trucks are owned for the private carriage of the owner's own goods. Another one-third of trucks are typically owned for personal transport; these trucks do not make a significant contribution to the urban freight task (see below). Only a small minority of urban trucks are owned and operated by commercial for-hire carriers.

<u>Number of Trucks Owned</u>	<u>Toronto</u>	<u>% of Owners Calgary</u>	<u>Halifax</u>
1	74	75	73
2	14	13	13
3-4	7	7	7
5-10	3	3	5
11-20	1	1	1
20	<u>1</u>	<u>1</u>	<u>1</u>
	100%	100%	100%

The predominance of owners with single-vehicle fleets is apparent. In part this reflects the personal usage of trucks, but it also indicates that many trucks in both private-commercial and for-hire cartage are operated by small, possibly one-man, firms.

Number of Trips per Day

Thus it appears that an urban truck makes about 6-7 trips per day, averaged over all trips and all trucks. The trip generation rate for internal trips by trip-making trucks is about 7-9 trips per day, on average.

The low rate for personal use trucks - comparable with that of the private car reflects the usage of these vehicles for passenger rather than freight transport.

Similarly, the daily trip generation rate varies significantly with the industry of ownership. The number of trips per truck per day for selected categories of ownership in Melbourne was as follows:

Manufacturers	11.5 trips per day
Construction	4.8
Retailers	7.8
Wholesalers	10.4

Another way of looking at this characteristic is to determine the proportion of daily truck trips generated by the various industry groups. This is shown in the following table:

	<u>11 U.S. Cities</u> <u>(WSA, 1969)</u>	<u>Melbourne</u> <u>(Ogden, 1975)</u>
Manufacturers	11	24
Transportation	13	17
Wholesale & Retail Trade	37	21
Construction	10	9
Government	6	10
Personal Use	10	10
Other	13	9
	<u>100%</u>	<u>100%</u>

#### Distance & Time Travelled Daily

The distance travelled by a truck in a day and the amount of time it spends travelling are both measures of the utilization of the truck fleet. However, both of these parameters vary with the type of truck and from city to city.

The amount of time which a truck spends on the road is also a measure of its utilization. WSA (1969) has reported that the average daily time in motion for 5 U.S. cities was 175 minutes per day. Light trucks were less heavily utilized than heavy trucks - 161 minutes compared with 220 minutes.

It is obvious from these figures that an average truck spends the greater part of its time at rest; WSA (1969) estimated that the average truck was in motion for only 12.2% of a 24-hour day. Consequently, it is necessary to examine the utilization of the time at rest, and in particular to examine how much of this is time that is spent waiting to be loaded or unloaded. The mean time delayed, the mean time travelling and their sum, the mean time in use per day

for various truck owner categories in Melbourne is shown below. Also, since not all vehicles experienced delay, the mean delay to delayed trucks is also shown (Ogden 1975).

<u>Type of Carrier</u>	<u>Time Delayed</u>	<u>Time Travelling</u>	<u>Time In Use</u>	<u>Delay to Delayed Trucks</u>
Commercial for-hire	33	182	215	39
Private commercial	23	124	147	60
Government	10	143	153	34
Personal	1	51	52	2

The figures reveal that the time spent waiting to be loaded or unloaded was a significant proportion of the total time in use for commercial for-hire and private commercial trucks, and that the delay experienced by delayed trucks was substantial. However, the total time in use was in all cases much less than the length of a working day; even commercial for-hire trucks were in use for only about 3½ hours per day on average.

Truck Trip Purpose

It is important to note at this point that only a small proportion of trips have purposes that involve the carriage of a full load of goods. In fact the majority of trips either do not involve goods movement at all (home base, business, personal use) or only involve partial loadings (many delivery trips, many service trips). This helps to explain the apparent low utilization of trucks which is reported below.

Two points emerge from these tables. Firstly, in different cities there is a different distribution of commodities. The commodities which are involved in any particular case are a reflection of that particular region's degree of industrialization, type of industries, growth rate, etc. Secondly, notwithstanding the first point, there are certain commodities which are important in most if not all cities. Perhaps one-quarter to one-third of all truck trips are made



by empty trucks. Food products and tradesmen's tools and equipment are possibly the most important commodity groups in terms of trip occurrence, while trips carrying waste products, manufactured products, fuel and mixed goods are also significant in numerical terms.

It can be seen that, although all cities reported small average trip lengths, there was a wide variation in the actual value of the parameter. This implies that the distribution of trip ends across the urban area varies between cities and thus the trip length varies also. However, the average trip length for heavy trucks is consistently higher than that for light trucks. This is probably because the smaller trucks are more likely to be used on pick-up and delivery functions and thus to have a greater concentration of trip ends.

It is clear from this that the reason for the small loads which were carried is not just that the truck fleet mainly comprised small vehicles. A more important reason is the range of purposes for which the truck fleet is used. It was noted above that only a small proportion of truck trips involved, as a part of their function, the carriage of a full load of goods. Many trips involved the movement of an empty vehicle to or from a load pick-up or discharge point, many involved only partial truck loadings, and many more were primarily for passenger-related trip purposes.

It is fairly well known that the peaks in urban truck trip generation do not coincide with car travel peaks. The peak hours for truck travel are mid-morning (between about 9:00 a.m. and 11:00 a.m.), and early afternoon (between 2:00 p.m. and 4: p.m.). Figure 2.1 which shows the hourly variation in both truck and car trips for the New York area is typical (WSA, 1969). Similar curves for

other cities have been published by TDA, (1974), Department of the Environment (1974), Chappel and Smith (1971) and Ogden (1975).

When particular types of truck activity are examined, rather than the aggregate overall distribution, a slightly different pattern emerges. For example, the Department of the Environment has shown that truck activity in the CBD tends to start later in the morning and finish earlier in the afternoon than truck activity elsewhere. This is probably related to the operating practices of truckers serving the downtown area, who probably try to avoid being in that area in the daily car peak hours (Fig. 2.2).

On the other hand, Hutchinson (1974 a) has shown that trucks generated by manufacturing industries in Toronto have three pronounced peaks, and the early morning peak in particular coincides closely with the car peak (Fig.2.3). This may be because many of these industries are located in urban fringe areas and thus are not as strongly influenced by car peak travel.

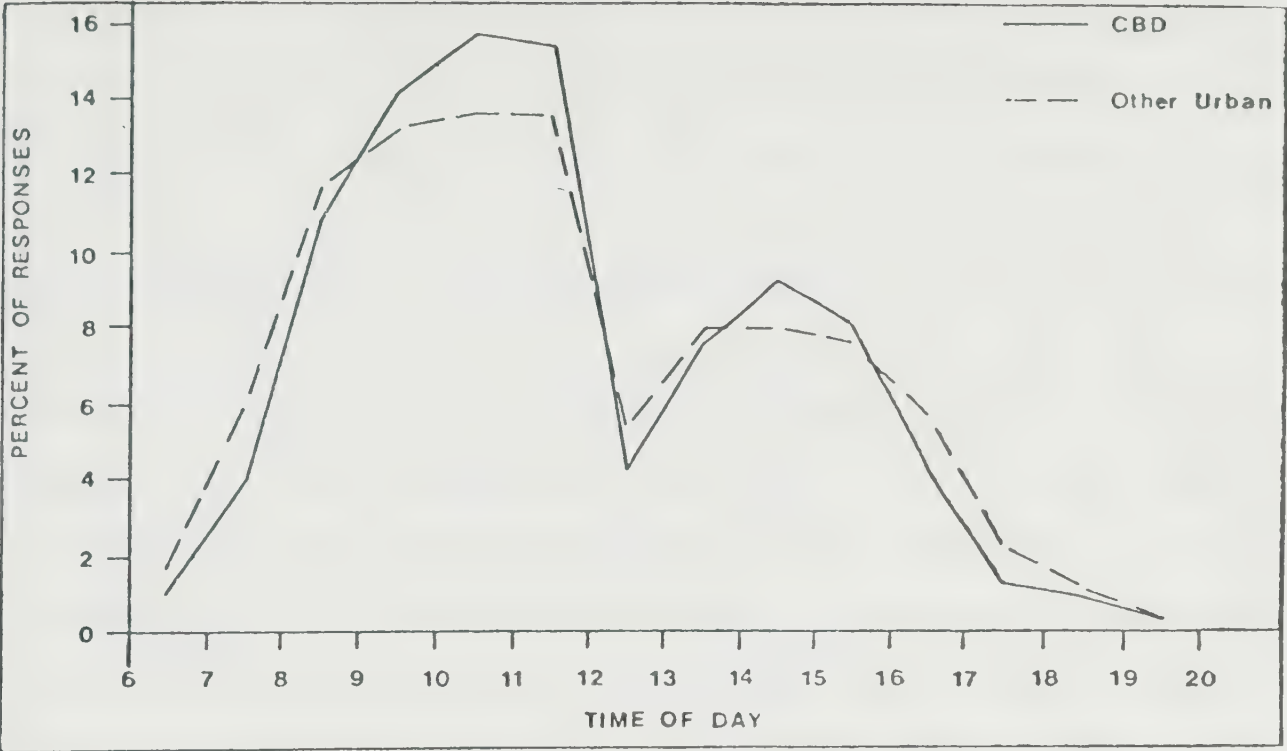


Figure 2.2 - Comparison of CBD & Other Urban Generation (Toronto)

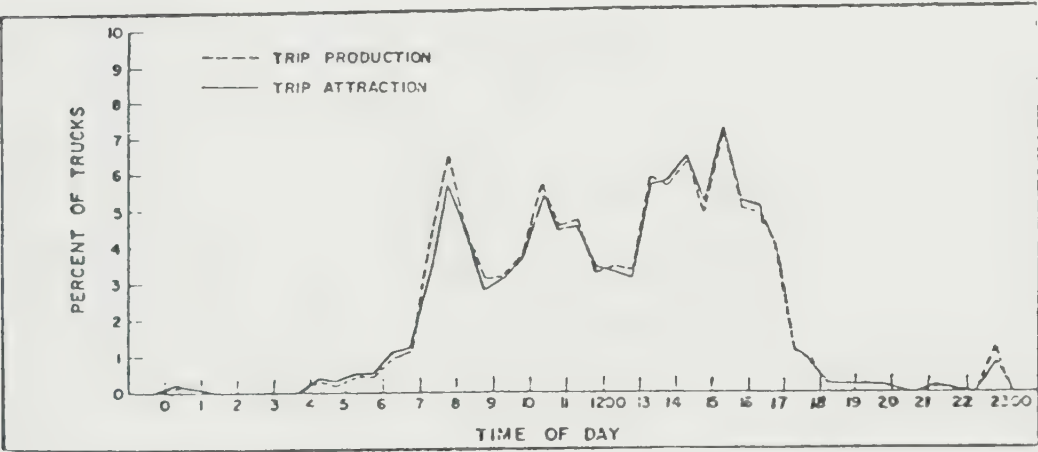


Figure 2.3 - Truck Trip Generation by Manufacturing Plants (Toronto).

It can be seen that the major trip generators are residences and retail stores. Together, these account for nearly half of all truck trips. The balance of the trips are generated by a wide range of land use activities.

On any particular street, the proportion of trucks will vary, depending partly upon whether there is a major truck traffic generator served by that street. Across a screen-line however, more consistency would be expected. WSA (1969) has shown that for several U.S. cities, the proportion of trucks crossing screen-lines was consistently in the range of about 15%-20% of total daily traffic. In Metro Toronto, the proportion of trucks crossing cordons in a 12-hour weekday varies from a low of about 11% in the case of screenline generally following Dupont Street, to a high of 16% in the case of screenlines east and west of the CBD. Suburban screenlines generally measured about 14% trucks (Metro Toronto Planning Department, 1976).

Moreover, the proportion of trucks in freeway traffic is higher than the proportion in arterial streets. On Metro Toronto expressways, the proportion of trucks was as high as 25% on Hwy. 400 south of Hwy. 401, and 22% on Hwy. 401 at the Humber River. Truck proportions on expressways were typically in the range of 16%-20%, which is higher than the proportions observed for screen-lines.

At the present time, it is not possible to review the non-quantitative aspects of urban freight in as comprehensive and detailed a fashion as has been done for the quantitative aspects. The main reason for this is that there have been very few comprehensive analyses of the institutional characteristics of urban

freight. Moreover even if there had been more, their value would be limited because the regulations governing the urban freight system vary considerably from place to place; in Ontario, much of the regulatory responsibility lies with the municipal level of government, and the regulations can and do differ significantly between municipalities.

Thus it is fortunate that one of the very few studies of actors and institutions in urban freight was based upon the freight system in metropolitan Toronto. This analysis, entitled "Project Contact Futures" was carried out by the Faculty of Environmental Studies at York University for the Transportation Development Agency in 1973-74. Much of the following comment is based on this study.



APPENDIX - R (Part 2)CHAPTER 6A SUMMARY OF OPPORTUNITIES FOR  
IMPROVING URBAN FREIGHT SYSTEMS6.1 INTRODUCTION

In Chapters 3 and 4 a number of particular problems associated with the movement of goods in urban areas have been identified.

There are probably a number of possible approaches to tackling each of the problems which have been identified. However, it is not possible at this stage to evaluate these various proposals, or to make suggestions or recommendations as to which are the most appropriate.

It would be unwise to attempt to reach conclusions regarding the best way to approach a specific problem in the absence of data and an understanding of the possible effects of changes. In order to analyze any such changes, or to evaluate any proposed solution, it is necessary to have a greater knowledge of existing urban freight processes and problems.

However, while it is not possible to make such recommendations at this time, it is nevertheless valuable to document the range of possible approaches which have been proposed by others. Furthermore, it may be that situations will arise that call for some decisions to be made before an adequate information and data base is established.

Accordingly, in this chapter, a number of possible approaches to solving urban freight problems are listed. No attempt is made to assess their viability or effectiveness, nor is the feasibility of the various proposals discussed; it is likely that many of the proposals are impractical on technical, economic or public policy grounds. The review is largely based upon the literature, (especially Simons, 1972; TDA, 1972 & Goeller, 1971) and also draws partly upon a listing prepared in 1975 by Mr. R. Smith of the Economics Policy Office.

Many of the approaches which are listed are basically improvements to or extensions of existing practice, and in some cases there is already some acceptance of these practices (for example, evening deliveries). However, these items are included if their wider use could be thought to improve urban freight efficiency.

For convenience, the list of proposals has been divided into seven categories, as follows:

- Improvements in Freight Technology
- Changes in Operating Practices
- Freight Consolidation
- Location & Zoning of Land Use
- Transport System Improvements
- Changes in Regulations
- Changes in the Pricing Structure

There is no particular advantage in this categorization, except possibly that it roughly corresponds with areas of responsibility in both the public and private sectors. Moreover, several strategies could be associated with two or more of the above divisions, but where this is the case, they have been included in one only. In the following sections, the various approaches in each category are briefly reviewed.

Following this review, a brief discussion is given of the policy instruments available for introducing some of these changes. Again, no attempt is made to assess the appropriateness or application of any of these instruments.

## 6.2 IMPROVEMENTS IN FREIGHT TECHNOLOGY

The various approaches in this category are technological. In some cases the existing technology may not be suited to the task, or in other instances, technical improvements may prove beneficial.

### Truck Design

Truck design is in a state of continuous evolution. Commercial forces might be expected to encourage the development of truck types more suited to urban conditions, while government regulations have been used to ensure satisfactory levels of safety, noise and air pollutions.

Developments which may have the potential to improve services include:

- the development of side loading vehicles for use in congested areas where off-street facilities are not available.
- the installation of handling facilities on the truck especially for loading and unloading.
- the development of security devices to reduce theft of vehicles or their contents.
- the use of smaller vehicles for specialized urban delivery.
- the use of larger vehicles for some types of urban delivery, especially where a smaller number of larger vehicles could carry out a given freight task (e.g. delivery of construction material).
- the development of electrically powered urban delivery trucks.

#### Freight-Passenger Service Integration

It might be possible to develop means of integrating the movement of passengers and freight in urban areas. Such possibilities include the following:

- using existing rail freight systems passing through an urban area for passenger movement.

- using existing transit systems, with freight and passengers being carried in the same vehicle.
- using rights-of-way which are exclusively for buses and trucks.

### Terminal Automation

Many urban consignments at present pass through a terminal where they are sorted for delivery. Delays and costs are associated with these terminal operations, and it may be that automated systems could introduce efficiencies. However, the critical problem is not really a technological one; automation is standard in many such situations (e.g. the post office). Rather, the problem is to encourage the development of situations in which the benefits of automation may be realized. This essentially means larger scale operations (e.g. by consolidation) and a degree of standardization in product sizes and packaging. These issues are discussed below.

### Innovative Technology

At present, goods movement in urban areas is dominated by the motor truck. The possibility of utilizing passenger vehicles for freight has been mentioned, but in addition, there may be scope for innovative technology. A central feature of such systems would be that they be automatic, with resultant lower labour costs. Such systems include:

- commodity pipelines (vacuum, pneumatic)



- containers on powered rollers
- banded consolidated freight on conveyors
- automatically routed vehicles on an exclusive right-of-way  
(e.g. in a tunnel).

### 6.3 CHANGES IN OPERATING PRACTICES

While many of the possibilities mentioned elsewhere would necessarily involve a change in the operating practices of cartage companies and shipping firms, it is possible that there may be benefits resulting directly from changes in the existing arrangements for carrying freight.

#### Improved Pick-up & Delivery Operations

Cartage companies engaged on pick-up and delivery operations generally operate in a systematic and well-organized manner. The operation may in some cases be improved by techniques such as the following:

- centralized dispatching, whereby the activities of several firms could be coordinated (this may lead to a form of route consolidation - see below).
- aggregated warehousing facilities, so that a number of firms delivering to the same clients use the same or adjacent warehouses.
- radio dispatching, which is already common, but its wider use could be encouraged.

- aggregated home deliveries, especially to apartments, so that all deliveries to an apartment building would be made to a central receiving facility.
- aggregated industrial and commercial deliveries, whereby all deliveries to tenants in a building or industrial park would be accepted at a common receiving facility.
- system to allow a driver to telephone ahead to ensure that a person will be available (especially at dwellings) to receive the delivery.

#### Time of Delivery

Currently, trucks in urban areas typically operate for only a few hours per day. If the truck utilization could be increased, it is theoretically possible to achieve a more efficient operation. There are two main ways in which this could be done: introduction of evening delivery (which is common in some industries, such as deliveries to supermarkets and service stations), and expansion of the hours in which firms will accept trucks. With respect to the first, the following techniques are available:

- delivery to a firm in the evening hours, with the receiver being present to accept delivery.
- a variation of the above, in which one person or firm would accept delivery on behalf of a number of firms (e.g. in a shopping centre).

- use of a 2-key storage room, in which the driver delivers and unloads the shipment, and locks the room as he leaves.
- use of a locked container or trailer, which is dropped off during the night.
- use of freight bins or slots, analogous to letter boxes.

In the second category, the problem is that the hours during which some firms will ship or receive goods are apparently decreasing - no deliveries at lunch-hour, no deliveries after 3:00 p.m., no deliveries before 9:00 a.m., no deliveries Friday afternoon, etc. If only a few firms adopt these practices, there is little difficulty in scheduling deliveries accordingly, but if many firms do it, truck utilization declines with resultant costs to all users. The problem can ultimately only be solved by negotiation between shipper, receiver and trucker, or possibly by presenting the firms with the costs they are causing (see below).

#### Containerization, Palletization and Packaging

Containerization has revolutionized international freight, but has had little effect yet on urban freight deliveries. There may be scope for its wider use, particularly if associated with some form of consolidated delivery.

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Palletization is associated with the use of mechanical aids to speed loading and unloading of trucks. Their wider use might be encouraged by standardized size, and improved accountability and return procedures.

Improved packaging can reduce spillage and breakage loss. The introduction of tariff and insurance structures which encourage the use of better packaging may be the best way of facilitating these improvements.

### Standardization

At the present time, there are impediments to the smooth flow of goods between shipper and receiver, and especially between different carriers where freight is inter-lined. Some of these impediments could be reduced if there was a rationalization and standardization of certain aspects of the freight system. The main such aspects are:

- standardized shipping units, such as pallets and containers of a standard size.
- through bill-of-lading - it should be noted that there exists a Federal-Provincial committee working towards rationalizing the paper work associated with freight movements.
- standardized commodity classification, to facilitate rate setting.



#### 6.4 CONSOLIDATION

It would appear that the capacity of the present truck fleet could be better utilized, in terms of both tonnage and time. It is argued that if freight were consolidated, the utilization of the fleet would improve, with a resultant reduction in the number of trucks required to carry out the freight task. (McDermott, 1976). Various consolidation schemes can be used, as follows:

- route consolidation, where only a single truck serves pick-up and delivery functions in a particular area, instead of the present arrangement, whereby several trucks from several firms serve the area.
- terminal consolidation, which would be necessary to realize the full benefits of route consolidation. This involves the use of a common terminal to facilitate the transfer of goods between carriers. Apart from facilitating the introduction of route consolidation, it has the advantage that the larger scale of operations permits the introduction of automated sorting and handling equipment.
- shipment consolidation, which simply means that fewer calls are made to a particular building, but a larger shipment is picked up or delivered.

#### 6.5 TRANSPORTATION SYSTEM IMPROVEMENTS

There are several ways in which the transportation system could be modified to either reduce the costs to trucks, or reduce the effects of trucks on the urban environment.

### Road and Intersection Improvements

The improvements of roads and intersections in urban areas, and the resultant reduction in congestion, has possibly the greatest potential of any scheme to reduce urban freight costs, (Lea, 1971). These improvements could take various forms, including:

- rationalizing the spacing and pattern of urban arterials and freeways.
- improving access roads to freight generating areas.
- construction of new and improved facilities in congested corridors.
- redesigning intersections which trucks presently have difficulty in negotiating.
- increasing traffic capacity and/or speed by signalization, area traffic control and other traffic management schemes.
- provide good maintenance.
- take trucks into account more explicitly in road and intersection design, e.g., where possible avoid signalized intersections on grades.

### Spatial Separation of Passenger and Freight Movement

The temporal separation of passenger and freight movement has been discussed above. The two flows can also be separated spatially, with the object of improving the flow of either passengers or freight, or perhaps both. The basic ways in which this might be done include:

- banning trucks from certain streets, usually for environmental reasons.
- provision of truck-only facilities, e.g., access roads to receiving facilities at regional shipping centres, the provision of freight tunnels to serve large downtown developments, etc.
- provision of truck-only lanes (or possibly joint use of a single lane by trucks and buses).

### Truck Routes

Many urban areas (e.g. Hamilton, Ontario) have a designated truck route system; trucks are not permitted to use other roads unless required to do so in order to make a pick-up or delivery. This concept is primarily used to prevent truck intrusion into residential areas, and as such can reduce some of the environmental problems of urban goods movement.

## 6.6 LOCATION AND ZONING OF LAND USE

Freight and freight vehicle movements are generated by commercial, industrial, residential and other activities. Consequently, by controlling the location of those activities, the effects of urban freight can be controlled to some extent.

Freight costs could potentially be lowered by the following means:

- grouping of industries on the basis of complementary trade to encourage back hauls.
- integration of the location of complementary activities, instead of the current practice of separating heavy industries, processing industries, warehouses, etc., which produces a need for heavy freight flow within an urban area.
- locating terminals for inter-city freight on the urban fringe, so that large highway trucks do not penetrate the urban area.
- consideration of transport infrastructure in land use planning to ensure optimum use of existing network.
- zoning land uses with high transportation requirements near good transportation facilities.
- encourage industrial location near appropriate transport infrastructure.

- restricting large industrial parks, warehouse, etc., to sites with rail sidings.
- redevelop congested areas, so that land use and transportation capacity are compatible.
- explicit consideration of goods movement requirements in planning of new towns, and preparation of official plans by municipalities.

#### 6.7 REGULATION CHANGES AIMED AT PROMOTING EFFICIENCY

Since government regulations of various types constitute part of the environment in which the urban freight system operates, it may be that changes in some regulations will have the effect of promoting efficiency, or reducing the problems associated with urban freight.

##### Traffic Regulations

Traffic regulations could be introduced, and present regulations enforced, either to reduce costs to trucks, or to reduce problems caused by trucks. For example:

- enforcement of no-stop, no-stand and no-park regulations to improve traffic flow.
- ease restrictions on truck parking, e.g., by increased provision of "loading zones".



- restrict the use of competing vehicles (especially private cars) in congested areas, so that only vehicles with a need are permitted in certain areas.

### Building Regulations

The location of freight generating activities has been discussed above; in addition, the provision and design of receiving and shipping facilities could be subject to regulation. For example:

- ensure that new apartment buildings of a certain size have a central receiving facility.
- ensure that new factories, warehouses, etc., to have adequate off-street loading facilities, including both the number of bays and the size of bays and access areas.
- require retail stores to have an adequate stock room, so that deliveries do not have to be made so frequently.
- require a "statement of transportation requirements" to accompany an application for a building permit by commercial or industrial establishments.

### 6.8 CHANGES IN THE PRICING STRUCTURE

It may be possible to improve efficiency by changes in pricing to encourage more desirable practices. Such changes might include the following:

- o FOB pricing for delivered goods, so that price is paid by the consignee as a separate direct charge.
- o encourage rate competition, rather than service competition alone.
- o introduce a system of extra charges for non-acceptance of deliveries.
- o encourage minimum charges per delivery to discourage multiple small deliveries.
- o pricing formula to reflect higher costs in certain areas, e.g., downtown deliveries, restricted time deliveries.

#### 6.9 POLICY INSTRUMENTS

It is useful to conclude this brief review of potential improvements to urban freight systems with an equally brief listing of the various policy instruments which are available to governments if they wish to become involved with urban freight improvements. Once again, this is only a list of available strategies, and no suggestions regarding economic, political or institutional feasibility are implied.

##### Infrastructure Investment

Investment in specific urban freight-related facilities, such as consolidation terminals, as well as investment in urban transportation facilities for general use.

### Taxation

The use of taxation as a policy instrument by increasing the costs of particular ways of conducting a transaction, thus making it less attractive, e.g., taxation of deliveries to discourage multiple deliveries.

### Subsidization

The payment of a subsidy or bonus to encourage desirable ways of conducting a transaction, e.g., to subsidize private investment in handling facilities.

### Regulation

The making of new or the reform of existing regulations with the specific intention of encouraging efficiency in urban freight.

### Demonstration

Demonstration projects may be undertaken by governments as part of an applied research and development program. If successful, the project may be taken up and used in the private sector.

### Technology Development

The development of new technology, involving fundamental research, particularly into technical or engineering aspects.

### Public Ownership

Governments could participate directly in the urban freight process, by ownership of particular services, e.g., air terminals, etc.

CHAPTER 7A PRELIMINARY EVALUATION SCHEME FOR  
URBAN FREIGHT7.1 INTRODUCTION

In the previous chapter, a list of possible ways in which the urban freight system might be improved was presented.

A knowledge of the range of alternatives which are available must, however, be complemented by a means of assessing the worth of any particular proposal. This final chapter is thus, concerned with the need to develop such an expertise and presents a proposed outline of a preliminary evaluation scheme for urban freight.

The evaluation scheme must, of necessity, be somewhat crude at this stage, because analysis and forecasting techniques are not currently available. However, the evaluation approach and the criteria determining the effectiveness of possible solution strategies are felt to be sound, and the approach presented here should be a suitable foundation for the development of more sophisticated and sensitive evaluation schemes in the future.

7.2 CRITERIA FOR EFFECTIVENESS

In the Phase 1 Report, at Section 4-3, the purpose of urban freight analysis in the context of transportation planning was discussed. It was suggested that the

transportation planning agency's interest in urban freight analysis is "to analyze the total costs of urban freight, the opportunities for and incidence of tradeoffs between the various cost elements, and the interaction between freight supply and freight demand."

Four cost elements were identified (Phase 1 Report, Chapter 5), as follows:

- o transport operation costs, which are essentially the direct costs of transporting goods.
- o external costs, which include environmental impacts and interactions with other vehicles and pedestrians.
- o community costs, which are costs incurred by governments in assuming responsibility for freight transport activities.
- o urban structure costs, which are a special type of external cost, and relate to the interaction between freight facilities and urban structure.

It follows that the criterion for the effectiveness of a particular change in the urban freight system, from a transportation planning viewpoint, is that it reduces the total cost of urban freight. (Meyburg, Diewald & Smith, 1974). Any criterion which is more restrictive than this, and which is addressed to only one of the four cost elements listed above (e.g. transport operation costs) runs



the risk of producing plans and policies which are unsatisfactory or even counter-productive. This is because it could happen that the desired cost reduction in the narrow area under study could only be achieved by incurring costs of a greater magnitude elsewhere in the system. For example, it may be that evening deliveries could reduce the transportation costs of urban freight (see Chapter 6), but in order to realize these savings, it would be necessary for receivers of goods to invest in double-key storage areas, have staff on duty at night, or in some other way incur costs in order to make the evening delivery proposal work. If these latter costs exceed the savings in transport operation costs, reduction in congestion, and any other benefits of the proposal, then clearly the proposal is not a desirable one for the view point of the community as a whole.

Thus, the essential criterion for determining the effectiveness of a possible solution to an urban freight problem is that the total costs of urban freight are reduced, commensurate with satisfying the freight requirements of the community. Of course, the costs of implementing the proposal must be treated as part of the evaluation.

### 7.3 SELECTION OF FREIGHT STRATEGIES

There is no shortage of possible ways of changing the freight system. The task is to select proposals which are appropriate for any particular case. In the preceeding section, it has been argued that the aim is to minimize (or reduce) the total cost of freight.

However, a government planning agency does not have much influence on many of the cost elements. The implementation of a particular strategy related to freight will more often than not mean that some costs are incurred so that a greater saving may result elsewhere. Since most of the cost elements are in the private sector, it is likely that for many of the proposals listed, those sectors which would be faced by extra cost, would object.

Consider the off-suggested strategy of increasing freight efficiency through consolidation. (The example is taken from Hicks, 1975). Consolidation involves the carrying of more than one shipment at a time. Its objective is to increase utilization of vehicle capacity and thereby reduce the number of trips that need to be undertaken and decrease the number of vehicles in the total urban fleet. As noted in Chapter 6, where consolidation offers a clear financial benefit for a firm, it tends already to be practised. The question is whether there are other opportunities for freight consolidation which are yet to be exploited.

Hicks set up a simple analytical example to represent the freight consolidation process, as follows: assume that a single truck is used solely to carry goods in an urban area from a rail station to a nearby retail variety store. Goods arrive by different trains in very small consignments at all hours during the day. The carrier operating the truck has his terminal at the rail-side where he is able to receive goods, sort them into compatible loads and palletize them. The retail store operates on a very low inventory so that longer delivery times represent a time cost to the store in inability to fulfil customers' requirements. Without load

consolidation, the truck travels continually between terminal and store, on each journey carrying whatever goods have arrived at the terminal (no matter how small the load) and travelling empty on the return to the terminal. Consolidation possibilities exist in holding the truck at the terminal until larger loads have been made up, enabling fewer journeys and higher average vehicle payload.

There are four main cost elements to the retail-to-store operation, as illustrated in Figure 7.1.

- (1) Linehaul and delivery cost. As the degree of consolidation (represented by average vehicle payload) increases, cost of linehaul and delivery per unit mass carried decreases.
- (2) Consolidation terminal costs. As the degree of consolidation increases so also do the costs of terminal operation and of driver standing by at the terminal.
- (3) Time cost. Consolidation results in fewer journeys and therefore, increases the average time between arrival of goods at the rail terminal and their delivery to the store. In this simplified example, time cost acts as proxy for what may be a range of transport quality costs resulting from consolidation. Another important quality cost may be the increased loss and damage due to greater handling of goods at the terminal.

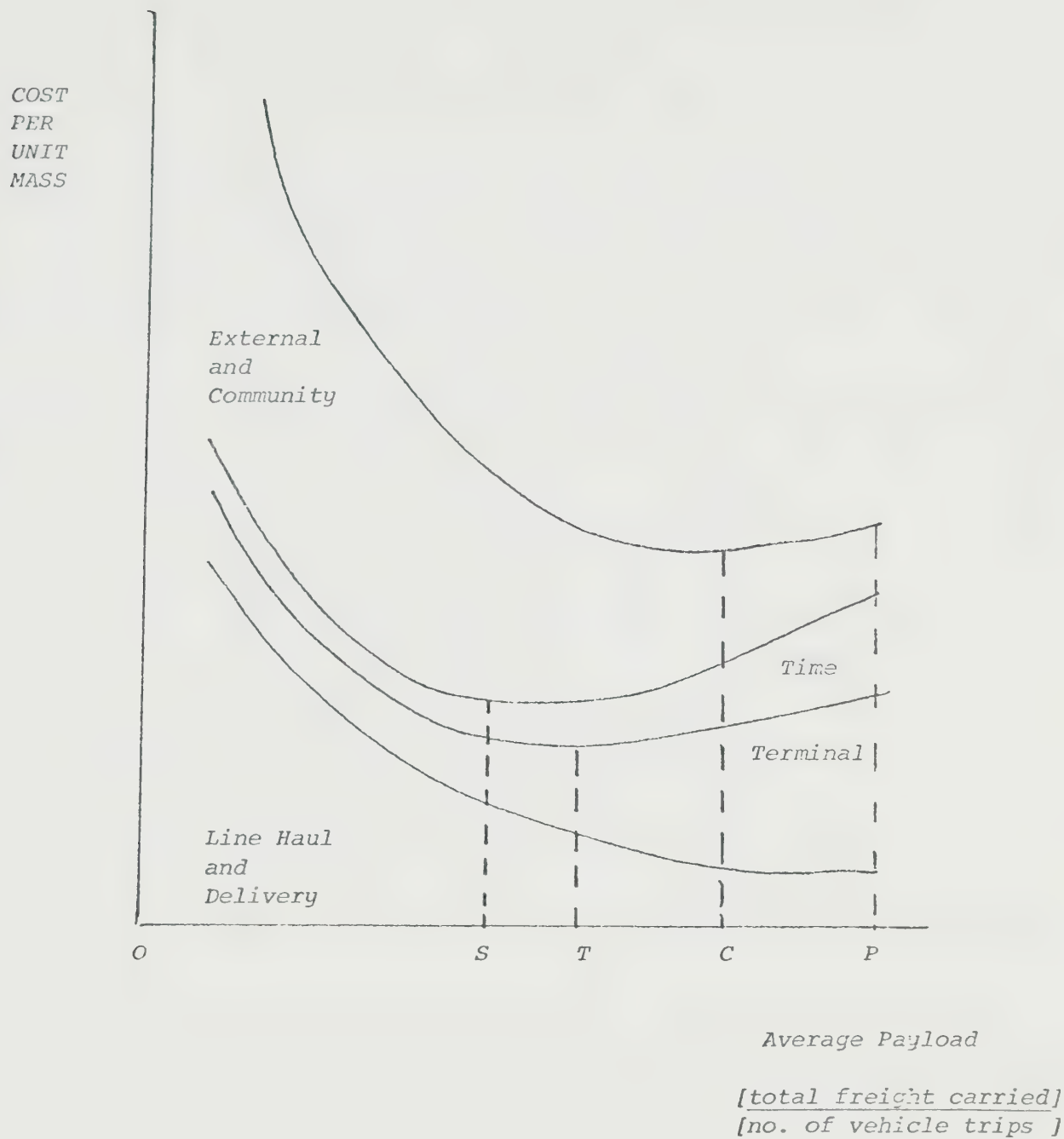


FIGURE 7.1 - FREIGHT CONSOLIDATION COSTS

- (4) Community and external costs. The higher the average vehicle payload and the fewer journeys made the lower will be the costs of wear and tear on the road and of externalities such as congestion and pollution.

The freight consolidation decision can be depicted as a "trade-off" between these four cost elements. If the truck owner is oriented towards minimization of his own costs, only the first two cost items are relevant to his decision as to the degree of consolidation he would prefer to undertake. From the point of view of the store, the entire transport operation cost is relevant. To minimize costs, the trucker would choose to operate the vehicle at an average payload to T in Figure 7.1, the store at S and the general community at C. As a revenue consideration - in order to meet the store's demand for a preferred quality (in this case, speed) of service - the trucker is likely to operate at S, at which total transport operation costs are minimized although his own vehicle and terminal costs are not. This can be called the financially optimal level of freight consolidation.

So there are three levels of "optimality" to the consolidation problem. The physically optimal level of consolidation, the highest average payload possible, is at P, where the average payload of the vehicle is equal to half the vehicle's load capacity, taking account of the empty return trip on each occasion. The financially optimal degree of consolidation is at S, where the transport operation costs are minimized. Without government influence this is the average payload at which the financially oriented firm could be expected to operate. Finally there is the economically optimal level of consolidation, C, at which all costs including community costs, are minimized.



In this example, Hicks has demonstrated the existence and significance of tradeoffs between various cost elements. He has also shown that different "actors" (the shipper, the carrier, the community) would try to operate in different ways. From a transportation planning viewpoint, the aim would be to try to encourage the operation of the system at point C, which is in the interests of the whole community, rather than at point S, which is the point at which it would probably otherwise tend to operate.

The question thus arises as to what policy options are open in order to encourage the operation of the system at C instead of S. To attempt through government regulation to encourage the firm to operate the truck at higher payloads appears to be impractical. Greater immediate potential would appear to lie in a somewhat different policy approach. Rather than attempt to move the firm from the financially to the economically optimal point, government may be able to assist the firm to move the cost curves in Figure 7.1 downwards, thus making the financially optimal level of consolidation less costly. Perhaps other nearby shops operate similar terminals, or are considering them, so that government can encourage cooperation between them to operate from the one terminal. This spreads fixed terminal costs across a greater freight volume, utilizes the vehicle more fully and speeds delivery time through lower waiting time at the terminal for sufficient goods to arrive. Alternatively, the cartage firm may be encouraged to find suitable backloads for the vehicle, or by some other means attempt to move points C and S closer together.

Thus, in essence, it is argued that in selecting solutions to freight problems, the policy which should be followed is firstly one of taking all costs into account, and

secondly to encourage the evolution of a system such that the private sector chooses to operate under conditions that are in both its own interest and in the interests of the community.

#### 7.4 PRELIMINARY EVALUATION APPROACH

It is clear that, in practice, an approach such as that outlined above would be difficult to implement at this stage. The particular cost elements which should be included in any particular analysis may not always be easy to identify, and in most cases it would not be possible to quantify.

However, the basic approach of identifying and weighting the tradeoffs between cost elements is sound. Thus, while for practical reasons a formal analysis using a cost-effectiveness or cost benefit approach is not feasible, a less formal approach along similar lines is possible. Initially, the approach would have to be non-quantitative, and consist essentially of a "balance-sheet" showing the positive and negative effects of any particular proposal. This at least would assist in focussing attention upon those elements which are critical in a formal evaluation process.

Such a "balance-sheet" approach is capable of being refined and adapted into a more quantitative evaluation scheme as numerical data, analysis techniques and a greater system understanding develop over time.

Thus, in summary, the evaluation scheme essentially involves taking all costs and impacts into account, and identifying the tradeoffs between the various cost elements

Initially, the evaluation scheme must be crude and simplistic, and involve little more than a "balance-sheet" showing the positive and negative aspects of a particular strategy. In time, more formal and numerical techniques could evolve.

The practical problems associated with the development of an evaluation scheme only serve to re-emphasize a central scheme of this whole Study Design - that the first priority for a transportation planning agency in urban freight analysis is the development of a much greater understanding of urban freight processes and problems.



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APPENDIX - S

Mr. Brian B. Caldwell,  
Research Director,  
Select Committee on Highway  
Transportation of Goods,  
Room 440, Main Parliament Bldg.,  
Queen's Park,  
TORONTO, Ontario M7A 1A2

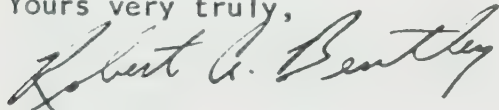
Dear Mr. Caldwell:

Re: Empty Miles Survey

As discussed by telephone with you yesterday, we enclose copies of a letter from R.K. House & Associates Ltd.

Please feel free to contact either Mr. Nix or the writer if further clarification is desired.

Yours very truly,



R.A. Bentley,  
Director,  
Economics and Finance

RAB:dk  
Encl.

March 11, 1977



R. K. HOUSE & ASSOCIATES LTD.  
ECONOMIC CONSULTANTS

6271 DORMAN ROAD, SUITE 5

MISSISSAUGA, ONTARIO L4V 1H1

TELEPHONE: 416-677-7998

March 10, 1977

Mr. R. A. Bentley  
Director, Economics and Finance  
Ontario Trucking Association  
555 Dixon Road  
Rexdale, Ontario

Dear Mr. Bentley:

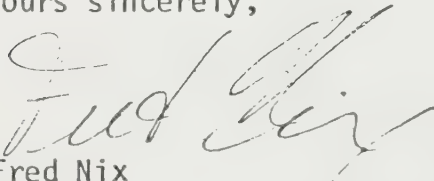
Upon rereading the report we submitted to you in February of this year, I note that there are a few points that should be clarified.

First, the average annual highway miles per power unit shown for large Class "A" carriers on Table 2 should be 99,863 and not the 135,285 indicated. This reduces the average for all Class "A" to 96,653 miles per year. The effect of this error in Section 3.4 of the report is to increase the estimated 22% by about two percent. In other words, our observation that for-hire carriers run about 22% of their total highway miles empty, should now read "about 24% empty"

Second, there may be some confusion on page 19 of the report where it reads "..... the figures shown on Table 3 for the total for-hire industry may understate the true significance of empty miles." What I am suggesting here is that the 17% shown on Table 3 may be too low; I am not suggesting that the 22% (now 24%) of Section 3.4 understates the significance of empty miles.

Finally, my last point concerns a subject that is mentioned in the report but that I do not believe is sufficiently emphasized. Specifically, a large number of empty miles are driven because of specialized equipment or some constraints that have nothing to do with the economic regulation of the industry. While it may be impossible to classify the empty miles shown in the report as either in or out of this category, this point should not be ignored. For example, as a very superficial estimate, it may be that well over half of total empty miles in Ontario are the result of specialized equipment. On Table 5, 54% of the reported empty miles are driven by Class "E", "F", "K", and "T" carriers. (This percentage would obviously be higher if it were possible to examine the specialized equipment of the remaining carriers - particularly the "D's", or even the "A's" and "C's" as the examples in the report show.)

Yours sincerely,



Fred Nix

FN:lm

555 Dixon Road  
Rexdale, Ontario M9W 1H8  
Telephone (416) 247-7131

Mr. Brian B. Caldwell,  
Research Director,  
Select Committee on Highway  
Transportation of Goods,  
Room 440, Main Parliament Bldg.,  
Queen's Park,  
TORONTO, Ontario M7A 1A2

Dear Mr. Caldwell:

We submit for your interest our recently completed survey of empty and light miles.

Please bear in mind that the purpose of this survey was not to quantify the empty miles situation with statistical accuracy, but rather to highlight it in general terms that would provide the Committee with a better insight into this area.

Yours very truly,



R.A. Bentley,  
Director,  
Economics and Finance

RAB:dk  
Encl.

February 17, 1977

ONTARIO TRUCKING INDUSTRY:  
EMPTY AND LIGHT MILE SURVEY

R. K. House & Associates Ltd.

January, 1977

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APPENDIX A	SURVEY QUESTIONNAIRE	

This study on the importance of empty and "light"\* miles has been conducted by R. K. House & Associates Ltd. on behalf of, and in association with, the Ontario Trucking Association.\*\*

The need for the study became apparent during the hearings before the Ontario Select Committee on Highway Transportation of Goods. Little factual material, on an industry-wide basis, was available for the Committee's consideration. The present study was commissioned, a survey designed and conducted, and the results tabulated and examined all within eight weeks. These self-imposed time constraints have been necessary in order that the results may be of some use to the Committee prior to the writing of their final report.

At the outset, it is important to bear in mind the aim of this study: it is not the definitive word on empty and light miles. The authors are well aware that a properly conducted study would take over a year to perform and would involve more rigorous statistical procedures.

(The study methodology employed here is described below in Chapter 2.)

Nevertheless, this study is quite important in that it is a useful preliminary examination to any more comprehensive survey. The aim

---

\* "Light" miles, in this report, are defined to be loads of less than 25% of a vehicle's weight or volume capacity.

\*\* The staff of the OTA had the primary responsibility for communicating with industry members. R. K. House & Associates Ltd. supervised the conduct of the survey and had sole responsibility for tabulating the results.



of the study is to qualitatively analyse empty and light miles as they occur in the trucking industry.

### 1.1 Summary of Findings

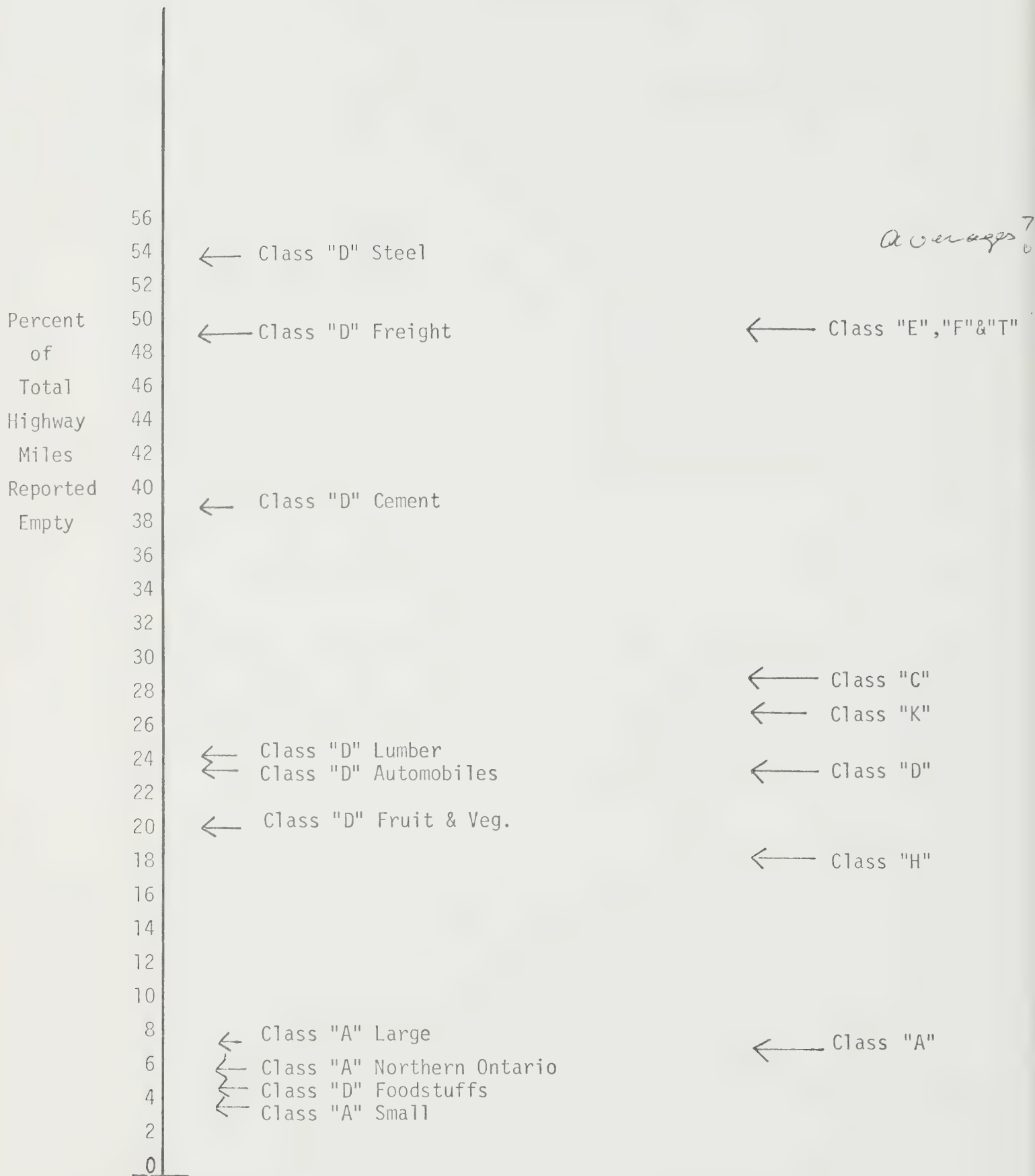
Figure 1 depicts the relative importance of empty miles for various types of for-hire carriers. In total, it is estimated that 22% of all miles driven by Ontario for-hire carriers are empty. (See Section 3.4). This varies from about 4% empty for the small Class "A" carriers to a high of 50% or more empty for Class "E", "F", "T", and some types of "D" carriers. Section 3.3 examines the responses and the information obtained in this study for each of the carrier types depicted on Figure 1. Chapter 4 develops this further by describing certain specific examples.

The carriers surveyed had more difficulty producing quantitative information on light miles (page 3 of Table 1 and Table 4). From the scanty information available, light miles do not appear to be a major problem for for-hire carriers; they total less than 5% of total miles for the firms participating in this survey.

The information from private carriers that was included in this study would seem to suggest that empty miles assume about the same importance for private as they do for for-hire truckers; light miles are much higher for private truckers (31% as compared to 5%). However, given the sample size, these two observations should be regarded with some caution.

FIGURE 1

EMPTY HIGHWAY MILES BY LICENCE CLASS



To gain some insight into the question of the importance of empty and light miles to the Ontario trucking industry, a structured sample of 70 OTA members was developed. This sample included for-hire carriers from all licence types and private carriers. In addition, Class "A" carriers were further subdivided into three categories:

- i) large - loosely defined as large general freight carriers that accumulated more than five million miles in a year and generally conducted inter-provincial (and, for some, international) operations.
- ii) small - general freight carriers accumulating less than five million miles annually and generally serving the smaller communities in Southern Ontario.
- iii) northern - general freight carriers, without regard to size, based in and serving northern Ontario.

Class "D" carriers were further subdivided into the following categories:

- i) fruit & vegetable
- ii) lumber
- iii) foodstuffs
- iv) mobile homes

- v) cement
- vi) steel
- vii) horses
- viii) automobiles
- ix) freight

Class "F" carriers were divided into two groups: bricks and live-stock.

\* Some for-hire carriers are difficult to categorize as "A" or "C", etc. carriers (in many cases a carrier holds several licences), and to the extent this is true, the results shown in the next two chapters may be grouped somewhat arbitrarily. For two respondents to the survey, it was possible to split their operations between licences; however, for several "C" and "D" carriers this was impossible. In these latter cases, the respondent was grouped according to the firm's opinion as to its major source of revenue.

The survey questionnaire itself is contained in Appendix A to this report. Because this information has been solicited on a confidential basis, it is impossible to reveal the names of the 46 respondents. of 70 Also because of confidentiality, some of the examples provided by the respondents in Chapter 4 have been changed, (for example, town "X" is used in some cases in place of the name of a town or city.)

### 3.1 Availability of Data

The most available and reliable information on empty miles came from the large Class "A" carriers. Most of these firms keep very accurate empty mileage (or empty trip) information.

The smaller carriers do not keep quite as detailed records; however, many of them were able to determine their total and their empty miles for a twelve month period.

Information on light miles; however, was not generally available; nor was it possible, without a great deal of work, to go back through existing records to reconstruct the number of light miles. A total of 46 carriers were able to provide some information for this study. Of these, 39 could be described as having "hard" data, and these 39 carriers are included in the tables of this study. (The seven carriers unable to provide data did provide examples of empty and/or light miles, and these have been used in Chapter 4.) Only 16 carriers were able to provide data on light miles, and, of these 16, four were included only because their particular operations never incurred any light miles.



### 3.2 Summary of Basic Data

Table 1 lists the basic information from the 39 respondents that were able to provide information accurate enough to be used. The following is a summary of the main points of this table.

- i) information on a total of 2,475 commercial power units (2,307 of which were for-hire) was obtained for a twelve month period;
- ii) these vehicles travelled a total of 193.7 million miles (182.9 million were for-hire);
- iii) including the 28.3 million piggyback miles (all Class "A" and "C" for-hire), the 39 respondents accounted for 222.0 million miles in 1976;\*
- iv) a total of 32.8 million empty highway miles (30.2 million were for-hire) were reported by the 38 respondents capable of reporting on empty miles; and
- v) for those 16 carriers capable of reporting on light miles, a total of 3.6 million (only 1.6 were for-hire) such miles were reported.

The information on Table 2, which shows the average annual highway mileage for highway units, is derived from Table 1. This information is used in Section 3.4 to weight the overall findings of this study.

---

\* The information is not quite for calendar year 1976 as some respondents had to go back a few months to obtain the information.

TABLE 1  
SUMMARY OF BASIC DATA

1	2	3	4	5
CARRIER TYPE	TOTAL INTER-CITY HIGHWAY MILES ( '000)	TOTAL PIGGYBACK MILES ( '000)	TOTAL MILES ( '000)	AVERAGE NO. OF HIGHWAY POWER UNITS
Class A - lrg.	78,792.3	27,947.3	106,739.5	789
Class A - sml.	1,693.8	0.0	1,693.8	51
Class A - nrth.	10,174.0	0.0	10,174.0	98
Class A - TOTAL	90,660.1	27,947.3	118,607.4	938
Class C	51,319.9	311.6	51,631.5	595
Class D-fr&veg.	3,547.1	0.0	3,547.1	50
Class D-lumber	943.7	0.0	943.7	12
Class D-foodst.	8,273.8	0.0	8,273.8	172
Class D-cement	6,800.0	0.0	6,800.0	150
Class D-steel	1,609.4	0.0	1,609.4	41
Class D-auto.	10,403.1	0.0	10,403.1	175
Class D-freight	185.6	0.0	185.6	6
Class D-TOTAL	31,762.7	0.0	31,762.7	606
Class E	265.7	0.0	265.7	8
Class F-brick	440.0	0.0	440.0	9
Class F-lvstck.	1,218.0	0.0	1,218.0	16
Class F-TOTAL	1,658.0	0.0	1,658.0	25
Class H	952.0	0.0	952.0	20
Class K	3,063.9	0.0	3,063.9	50
Class T	3,250.0	0.0	3,250.0	65
TOTAL FOR-HIRE	182,932.4	28,258.9	211,191.3	2,307
Private	10,790.9	0.0	10,790.9	168
GRAND TOTAL	193,723.3	28,258.9	221,982.1	2,475

TABLE 1 (page 2)

SUMMARY OF BASIC DATA

1	6	7	8	9
CARRIER TYPE	EMPTY INTER-CITY HIGHWAY MILES ( '000)	EMPTY PIGGYBACK MILES ( '000)	TOTAL EMPTY MILES ( '000)	BOBTAILED MILES (included in columns 6 & 8) ( '000)
Class A - lrg.	6,244.4	688.2	6,436.7	206.2
Class A - sml.	60.0	0.0	60.0	2.0
Class A - nrth.	680.4	0.0	680.4	3.1
Class A - TOTAL	6,984.9	688.2	7,177.1	211.3
Class C	12,527.9	169.0	12,696.9	11.0
Class D-fr&veg.	737.4	0.0	737.4	-
Class D-lumber	235.0	0.0	235.0	-
Class D-foodst.	441.5	0.0	441.5	0.0
Class D-cement	2,700.0	0.0	2,700.0	-
Class D-steel	876.9	0.0	876.9	0.0
Class D-auto.	2,501.6	0.0	2,501.6	0.0
Class D-freight	92.8	0.0	92.8	-
Class D-TOTAL	7,585.2	0.0	7,585.2	0.0
Class E	132.9	0.0	132.9	0.0
Class F-brick	220.0	0.0	220.0	0.0
Class F-lvstck.	80.0	0.0	80.0	0.0
Class F-TOTAL	300.0	0.0	300.0	0.0
Class H	178.3	0.0	178.3	0.0
Class K	847.6	0.0	847.6	0.0
Class T	1,625.0	0.0	1,625.0	-
TOTAL FOR-HIRE	30,181.6	857.2	30,542.8	222.3
Private	2,633.4	0.0	2,633.4	- -
GRAND TOTAL	32,815.0	857.2	33,176.2	- -

TABLE 1 (page 3)  
SUMMARY OF BASIC DATA

1	10	11	12
CARRIER TYPE	"LIGHT" INTER-CITY HIGHWAY MILES ( '000)	"LIGHT" PIGGYBACK MILES ( '000)	TOTAL "LIGHT" MILES ( '000)
Class A - lrg.	480.0	61.7	541.6
Class A - sml.	203.4	0.0	203.4
Class A - nrth.	684.6	0.0	684.6
Class A - TOTAL	1,368.0	61.7	1,429.7
Class C	2.0	0.0	2.0
Class D-fr&veg.	-	-	-
Class D-lumber	-	-	-
Class D-foodst.	-	-	-
Class D-cement	-	-	-
Class D-steel	-	-	-
Class D-auto.	-	-	-
Class D-freight	-	-	-
Class D-TOTAL	-	-	-
Class E	-	-	-
Class F-brick	-	-	-
Class F-lvstck.	-	-	-
Class F-TOTAL	-	-	-
Class H	110.3	0.0	110.3
Class K	125.0	0.0	125.0
Class T	-	-	-
TOTAL FOR-HIRE	1,605.3	61.7	1,667.0
Private	1,960.7	0.0	1,960.7
GRAND TOTAL	3,566.0	61.7	3,627.7

TABLE 2

## AVERAGE ANNUAL MILEAGE, HIGHWAY POWER UNITS

1	2
CARRIER TYPE	AVERAGE ANNUAL MILEAGE, HIGHWAY POWER UNITS
Class A - lrg.	135,285
Class A - sml.	33,212
Class A - nrth.	103,817
Class A - TOTAL	126,447
Class C	86,252
Class D-fr&veg.	70,942
Class D-lumber	78,642
Class D-foodst.	48,103
Class D-cement	45,333
Class D-steel	39,254
Class D-auto.	59,446
Class D-freight	30,940
Class D-TOTAL	52,414
Class E	33,214
Class F-brick	48,889
Class F-lvstck.	76,125
Class F-TOTAL	66,320
Class H	47,600
Class K	61,279
Class T	50,000
TOTAL FOR-HIRE	79,294
Private	64,231
GRAND TOTAL	78,272



### 3.3 Empty & Light Miles

Tables 3 and 4 show, for those respondents with the information, empty and light miles as a percent of total miles. (Figure 1 in the first Chapter shows some of the figures from Table 3 in a simplified form.)

The general observations that may be made are:\*

- i) As a group, the Class "A" carriers incur the least number of empty highway miles (7.73%). Since Class "A" carriers accounted for the largest number of respondents (representing over 90 million miles) and, since these carriers maintained the most accurate records, it may be presumed that this is a fairly accurate assessment of the operational characteristics of Class "A" carriers.
- ii) Comparisons among different types of carriers with respect to light miles are difficult to make because of the absence of data. However, with the information that is available, light miles do not seem to be a major factor in Class "A"

---

\* At the risk of being repetitive, these general observations and the figures on which they are based are true for the sample of trucking firms under review. They have less validity for the entire universe of trucking operations in Ontario. For example, within some of the Class "D" categories, only one carrier is represented by the figures shown on Table 3. Rather than regarding the particular percentage shown as the definitive word on the subject, it is safer to treat the figures as a possible indication of the ranking of these carriers in relation to other types.

TABLE 3  
EMPTY MILES

1	2	3	4
CARRIER TYPE	HIGHWAY EMPTY MILES * (%)	PIGGYBACK EMPTY MILES ** (%)	TOTAL EMPTY MILES (%)
Class A - lrg.	7.93	2.59	6.56
Class A - sml.	4.14	0.00	4.14
Class A - nrth.	6.69	0.00	6.69
Class A - TOTAL	7.73	2.59	6.54
Class C	29.20	54.22	29.59
Class D - fr.&veg	20.79	0.00	20.79
Class D - lumber	24.90	0.00	24.90
Class D - foodst.	5.34	0.00	5.34
Class D - cement	39.71	0.00	39.71
Class D - steel	54.48	0.00	54.48
Class D - auto.	24.05	0.00	24.05
Class D - freight	50.00	0.00	50.00
Class D - TOTAL	23.88	0.00	23.88
Class E	50.00	0.00	50.00
Class F - brick	50.00	0.00	50.00
Class F - lvstck.	50.00	0.00	50.00
Class F - TOTAL	50.00	0.00	50.00
Class H	18.72	0.00	18.72
Class K	27.66	0.00	27.66
Class T	50.00	0.00	50.00
TOTAL FOR-HIRE	17.42	3.19	15.84
Private	24.40	0.00	24.40
GRAND TOTAL	17.83	3.19	16.30

\* The percentages in this column are derived by dividing empty inter-city highway miles by total highway miles. Since some carriers did not provide information on empty inter-city miles, it is not always possible to derive the figures shown above from the data given in Table 1.

\*\* Empty piggyback miles as a percent of total piggyback miles for carriers who provided both pieces of information.

TABLE 4  
"LIGHT" MILES

1	2	3	4
CARRIER TYPE	HIGHWAY "LIGHT" MILES* (%)	PIGGYBACK "LIGHT" MILES* (%)	TOTAL "LIGHT MILES" (%)
Class A - lrg.	2.81	0.64	2.02
Class A - sml.	12.01	0.00	12.01
Class A - nrth.	6.73	0.00	6.73
Class A - TOTAL	4.73	0.64	3.70
Class C	0.06	0.00	0.06
Class D - fr.&veg.	-	-	-
Class D - lumber	-	-	-
Class D - foodst.	-	-	-
Class D - cement	-	-	-
Class D - steel	-	-	-
Class D - auto.	-	-	-
Class D - freight	-	-	-
Class D - TOTAL	-	-	-
Class E	-	-	-
Class F - brick	-	-	-
Class F - lvsck.	-	-	-
Class F - TOTAL	-	-	-
Class H	11.59	0.00	11.59
Class K	17.86	0.00	17.86
Class T	-	-	-
TOTAL FOR-HIRE	4.73	0.64	3.82
Private	31.17	0.00	31.17
GRAND TOTAL	8.86	0.64	7.27

See footnotes on Table 3

operations (averaging only 4.73% of total highway miles). However, when Class "A" carriers are separated into three groups (large, small, and northern), light miles do assume a larger role in the operations of the small Class "A" (12.01%) and northern Class "A" (6.73%) than they do in the operations of the large Class "A" carriers (2.81%).

- iii) As for the reasons given by Class "A" carriers (in Chapter 4, below) for the occurrence of empty and light miles, no good examples were obtained from the small Class "A", carriers and it is thought that the examples given by the northern Class "A" carriers simply add to the previously documented (in submissions to the Committee) difficulties of northern operations. The large Class "A" carriers provide some examples that may throw more insight into the problem of empty and light miles. Because this survey is "non-scientific", the following observations should be treated as "impressions" rather than definitive conclusions.
- iv) First, some of the large Class "A" carriers give the impression that empty and light miles are less of a problem in the Toronto - to - western Ontario corridor than elsewhere. The reasons offered for the empty and light miles that do occur in this area include a) the situation where some communities lying off the main

routes have some imbalances in inbound and outbound freight, and b) the particular situation in the Sarnia area. (This situation, according to some respondents, arises for two reasons: first, raw materials tend to move into Sarnia by pipeline or rail and manufactured goods tend to move out by truck, thereby creating more eastbound truck traffic than westbound - inbound Sarnia; and second, a natural imbalance of international truck traffic already exists which further aggravates the greater flow of eastbound traffic.)

v) There seems to be some consensus among large Class "A" carriers that eastern Ontario (Toronto - to - as far east as Quebec City) is more troublesome than western Ontario in terms of empty and light miles. Several carriers mention the natural imbalance of general freight truck traffic out of Quebec (that is, more traffic moving into Quebec from Ontario than the reverse). Also, as in western Ontario, the problems of small centres off main routes is mentioned as a contributing factor; and, something that is not mentioned in western Ontario but certainly is important in the north, is the situation where loaded trailers moving into the area are unloaded and then have to move empty to some other location to pick up some semi-manufactured product.

vi) Most of the large Class "A" carriers refer (Chapter 4) to the imbalance of truck traffic between the U.S. and Canada as a contributing factor to empty miles occurring between southern Ontario points and the border.



- vii) If it is possible to develop a consensus opinion from the Class "C" carriers participating in this survey, it would be this: the nature of a Class "C" authority leads to the occurrence of a high number of empty miles (the group averaged 29.20% - although two of the "C" carriers reported 50.0%), and the occurrence of practically no light miles (the group averaged 0.06%).
- viii) "D" Carriers, as a group, averaged 23.88% empty miles and had no information on light miles. Since in most of the sub-categories of different types of "D" carriers there was only one (and occasionally two) respondents, it is difficult to draw any conclusions or make any generalizations here that add to the figures in Tables 3 and 4 or the examples given in Chapter 4.

It is possible that Class "D" fruit & vegetable carriers run more than the reported 20.79% miles empty; in fact, there is some indication that empty miles may be as high as 50% for these carriers. (The respondent in this survey, however, hauls much more than just fruit and vegetables.)

The examples of empty miles given by Class "D" carriers mention the difficulty of finding return loads either because of specialized equipment (for example, cement, foodstuffs and automobile haulers); licence restrictions

(particularly true for steel haulers); particular operations for some customers (for example, hauling hides for a large packer on a 40 mile run); and, simply the lack of return loads in regions where traffic imbalances already exist.

- ix) The Class "E" (milk and cream), "F" (in this survey, livestock and brick), and "T" (tank) carriers unanimously reported 50.0% of their miles driven empty. As the examples in Chapter 4 show, this would seem to be attributable to the specialized nature of their equipment and operations.
- x) Class "H" carriers report 18.72% of their miles as empty and 11.59% of their miles as light. These figures, however, are based on the performance of inter-provincial vehicles. There is conflicting evidence (not on the Tables) as to whether or not purely provincial vehicles perform any better or any worse than inter-provincial vehicles.
- xi) Class "K" carriers, averaging 27.66% empty and 17.86% light miles, operate such specialized and irregular services that the occurrence of empty or light miles is largely dependent on the inability to find return loads of heavy machinery or equipment.

- xii) There are many types of private carriers, and it is not known whether or not the few that were included in this survey are typical enough to allow any conclusions to be drawn from the figures shown on Tables 3 and 4. There might be some reasons for supposing that private carriers incur more empty return trips than for-hire. The figures shown on Table 3 would tend to support this supposition (private carriers averaged 24.40% empty miles versus for-hire's 17.42%). However, as shown in the next section, the figures shown on Table 3 for the total for-hire industry may understate the true significance of empty miles. The results of this study are not accurate enough to decide this issue one way or the other.
- xiii) There is, however, some indication that light miles are more significant for private carriers than they are for for-hire carriers. But again, because of the small sample of private carriers included in this survey, it is prudent to regard even this observation with some caution. (The private carriers included here have a high proportion of peddle or distribution runs in their operations and this may overstate the importance of light miles for the total universe of all private carriers.)

3.4 Weighting of Results

To the extent that the average empty miles reported on Table 3 are statistically valid, it is possible to derive a rough estimate of the total importance of empty miles for most of the for-hire vehicles in Ontario. The following table shows (in column 2) the number of power units registered by licence class in Ontario in 1976 (as reported in Appendix 1 of the OTA's submission to the Select Committee).\* Column 3 is simply the number of power units times the average annual mileage shown in Table 2; and column 4 has been derived by multiplying the mileages shown in column 3 of Table 5 by the appropriate percentages from Table 3.

This weighting of the results by the number of registered vehicles indicates that of a total of 3.4 billion miles driven by Ontario registered for-hire vehicles in 1976, 746 million miles or 22% were driven empty. (The significance of this weighting is in the 22% and not in the estimated total of 3.4 billion or 746 million miles.)

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\* Class "FS", "X", and "FF" omitted.

TABLE 5

FOR-HIRE EMPTY MILES IN ONTARIO

1 LICENCE CLASS	2 POWER UNITS 1976	3 TOTAL ANNUAL MILEAGE ( '000)	4 TOTAL EMPTY MILES ( '000)	
"A"	13,544	1,712,598	132,384	
"C"	4,061	350,269	102,279	
"D"	8,770	459,671	109,769	
"E"	698	23,183	11,592	
"F"	10,340	685,749	342,875	
"H"	1,618	77,017	14,418	
"K"	489	29,965	8,288	
"T"	981	49,050	24,525	
TOTAL	40,501	3,387,502	746,130	(22.03%)



This Chapter records the responses to Section C of the questionnaire. Because of the cryptic nature of the responses (the use of colloquialisms, abbreviations, etc.), some major rewriting has been necessary. Further, to preserve the identity of the respondents, some names of places have been changed to "city in northern Ontario", "X", etc., and some tonnage figures have been changed to percentages.

In Section 4.1 below, the examples given by the large Class "A" carriers have been grouped as much as possible, into regions.

4.1 Class "A" - Large

Percent Empty Highway Miles	7.93%
Percent Empty Piggyback Miles	2.59%
Percent Light Highway Miles	2.81%
Percent Light Piggyback Miles	0.64%

● WESTERN ONTARIO (Toronto to and from Western Ontario)

- example #1"Empty highway miles are 8.1% of total."
- example #2"Light highway miles are 1.6% of total."

example #3

"Western Ontario town ("X") to and from another town ("Y").

" "X" being a small community, most LTL inbound from all other points is combined at "Y"

"We build an average of 22 full LTL loads from "Y" to "X" each month.

" "X" 's outbound traffic is also very light which must be broken and distributed from . (An average of 18 "light" loads & 6 empties per month)

"This accounts for the "X" to "Y" lane to average 37,440 "light" & empty miles per year."

example #4

"Out of a total of 7,015 trips from Windsor to Toronto, 20 were empty; and, in the opposite direction, 35 out of the 7,015 trips were empty."

example #5

"Out of a total of 1,988 trips from Sarnia to Toronto, there were no empty movements. In the opposite direction, however, there were 557 (28%) empty trips. The reasons for this imbalance are: (i) raw materials move into Sarnia by pipeline and rail and the finished product moves out by truck; and, (ii) an imbalance in U.S. to Ontario traffic further aggravates the existing situation."

- EASTERN ONTARIO (Toronto to and from points in eastern Ontario, and as far as Quebec City)

example #6

"Empty highway miles are 10.7% of total."

example #7

"Light highway miles are 3.4% of total."

example #8

"Eastern Ontario town ("X") to and from Ottawa:

"Loads into "X" are mainly General Merchandise from Toronto. (Average 43 loads per month)

"Loads out of "X" are mainly Matches & Steel cabinets to Montreal. (Average 15 loads per month)

"X" has very little LTL to any one Ontario terminal, therefore we operate a wayfreight run for Eastern Ontario points which consolidate at Ottawa. (average 22 "light" loads per month)

"Ottawa requires a large number of trailers for TL's of paper to the U.S. per month. "X" runs an average 8 empties per month to Ottawa to help meet this requirement.

"This accounts for the "X" to Ottawa lane to average 37,440 "light" & empty miles per year and the Ottawa to "X" lane to average 27,456 "light" miles per year."

example # 9

"Quebec to Ontario - General Commodities

"Due to the nature of the two provinces, i.e. more industry in Ontario than Quebec. Ontario moves more full trailers to Quebec than Quebec moves to Ontario. Approximately 102 trailers out of 1,000 that move to Quebec from Ontario every month must return empty to maintain the trailer balance."

example #10

"Ontario - Quebec

"Due to a six month strike at [large industry], Quebec steel had to be transported from Hamilton, Ontario to the Montreal, Quebec area. Special types of equipment for steel was needed in Hamilton, Ontario and had to be moved empty from Montreal to Hamilton, Ontario. Approximately 740 empty trailers moved from Quebec to Ontario during the six month strike."

example #11

"Empty miles from Montreal to Toronto run at approximately 9,000 miles per month. In 1976 we moved 77,000 tons into Montreal and only brought 65,000 tons out.

● NORTHERN ONTARIO (Toronto to and from points north of Huntsville)

example #12

"Empty highway miles are 12.1% of total."

example #13

"Light highway miles are 12.3% of total."

example #14

"Two Northern Ontario towns ("X" and "Y") to and from Toronto:

"Toronto averages 24 full loads of LTL into "X" per month and 35 into "Y". The backhaul is very light on LTL traffic from each of these points. We therefore run pup trains daily on these lanes, "X" to "Y", combine with "Y" 's pup train then continue to Toronto.

" "Y" also averages 24 TL's from [large industry] to Montreal per month, thereby requiring empty moves from "X" to "Y"

"This account for the "X" to "Y" lane to average 55,500 "light" & empty miles per year and the "Y" to Toronto lane to average 63,756 "light" miles per year."

example #15

"Empty miles from the Prairie Provinces to Toronto run at approximately 21,000 miles per month. In 1976 we shipped 60,000 tons into the Prairies and only 48,000 tons out."

• ONTARIO - U. S. A.

example #16

"Ontario and Quebec to U.S.A.

"Due to the fact that Canada is an importing nation. This naturally lends itself to an imbalance situation, load for load cannot be matched therefore empties must be sent back to U.S.A. to balance equipment.

"Approximately 80 percent of the total number of trailers that move from Ontario and Quebec to Buffalo, U.S.A. are empty for maintaining the service."

example #17

"Out of a total of 5,317 trips from Buffalo to Toronto, there were no empty movements. In the opposite direction however, fully 2,232 or 42% of the trips from Toronto to Buffalo were empty."

example #18

"Empty miles from Ontario terminals to Queenston-Lewiston run at approximately 20,000 miles per month and are caused by the excess of freight from Buffalo to Canada.

Buffalo - 1976 tonnage  
To Canada - 102,800  
From Canada- 36,300

example #19 "In 1976 we incurred 350,000 empty miles running from Ontario to the Buffalo gateway. With the volumes involved in automotive manufacturing and the demands that are placed on a carrier handling this type of account, empty return trips become a part of our routine daily operation."

example #20 "In 1976 we incurred 200,000 empty miles running from Ontario to the Detroit/Windsor Gates. [Automotive account is offered as part of the reason.]

#### 4.2 Class "A" - Small

Percent Empty Highway Miles	4.14%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	12.01%
Percent Light Piggyback Miles	0.00%

No examples.

#### 4.3 Class "A" - Northern

Percent Empty Highway Miles	6.69%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	6.73%
Percent Light Piggyback Miles	0.00%



example #21

"Destination Points for Northbound Hauls Differ From Origin Point for Southbound Hauls:

"We have freight terminals in Toronto and five northern Ontario communities. We are transporting general merchandise freight on a daily overnight basis from Toronto to all of these points as a northbound head haul. In [certain areas of the north] there is a shortage of southbound haul for our company. Rather than returning empty from these terminals to Toronto we have available to us haulage from [certain other areas in the north]. On a regular basis, trailers run empty [between these two areas] in order to pick up loads destined southbound to Toronto."

example #22

"Destination Points for Northbound Hauls Differ From Origin Point for Southbound Hauls: This summer and fall we ran approximately one trip per day from Toronto to "X" with four-axle flat deck trailers hauling maximum pay loads of pre-cast concrete and gypsum board. In the immediate "X" area there is a shortage of southbound haul with this type of equipment, therefore we travelled empty from "X" to Hearst and Cochrane in order to pick up loads of lumber consigned to southern Ontario points. There has been a demand for trucks to transport lumber southbound from Hearst and Cochrane and the four-axle flat deck trailer is ideally suited for this haulage. Also on this lumber haulage, contributing to a few more empty miles is the fact that this lumber is consigned approximately 20% to Toronto and 80% to other southern Ontario points. There would be some empty miles running from the destination point of the lumber in southern Ontario back to Toronto, to reload for a northbound haul."

example #23

"customers shipping freezable freight in the winter months require heated vans on northbound loads from Toronto to [northern Ontario points]. At the same time there is usually a slow down on commodities moving southbound which can be transported in vans. This may necessitate trailers running empty from [the north] back to Toronto."

example #24

"the largest portion of our freight is transported on flat deck trailers with racks and tarps. On commodities such as lumber and sometimes steel which require trailers with no racks or tarps, the storage of the same can be a problem and in some instances where the load requires the full 45 foot of deck room, we are faced with having to leave our racks with the northern shipper or return southbound empty and in some cases this does happen."

example #25                    "again with our flat deck equipment, we can get the reverse situation, where the northbound load from Toronto is on a flat deck trailer and the return haul may require tarp and racks. Our dispatchers spend many extra hours trying to hand pick the return haul so as to avoid this situation, but it is not always possible."

example #26                    "Steel moving into the Thunder Bay area out of Sault Ste. Marie requires that we run back empty occasionally should there be no lumber for a backhaul to the Sault Ste. Marie area from Marathon and Terrace Bay.

Mileage	Steel to Thunder Bay	460 miles
	Thunder Bay to Marathon	185 miles
	Thunder Bay to Terrace Bay	220 miles"

4.4 Class "C"

Percent Empty Highway Miles	29.20%
Percent Empty Piggyback Miles	54.22%
Percent Light Highway Miles	0.06%
Percent Light Piggyback Miles	0.00%

example #27                    "The nature of the Class "C" operation, certainly in our case, is such as to provide frequent demands for multiple loads of material to be moved in a short period of time...e.g. our company may be asked to move eight or ten loads of liquor from Toronto to Ottawa, to arrive the following day on a scheduled basis. It is almost impossible to obtain, on short notice, any, let alone eight or ten, loads in return movement to Toronto because the volume of outbound truckload traffic from Ottawa to Toronto is very limited, and ordinarily moved by Ottawa based carriers.

"The same situation prevails on large, multiple loads of import traffic destined to an inland point where there is little traffic available for return movement."

#### 4.5 Class "D" Fruit & Vegetable

Percent Empty Highway Miles	20.79%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	-
Percent Light Piggyback Miles	-

example #28

"Border operation is hauling American trailers from the gateway at Niagara Falls to various customers in the Toronto area. Goods originate in American cities - ex. Florida, California, Louisiana, etc. Americans haul to the border at Niagara Falls and drop their trailers, we, in turn, hook on to it with our tractor and haul to the customer in Toronto. When this trailer is empty our tractor must haul the empty trailer back to the border where the American is waiting for his trailer. The empty mileage from Toronto to the bridge is approx. 80 miles. We haul as many as 400 of these loads per month. This could mean as many as 32,000 miles empty in this operation per [month].

"This is a 12 month operation!"

example #29

"On any given day a customer from Toronto area will call our firm with a pick-up for the following day. We dispatch a tractor-trailer from our terminal empty, 70 miles. Our unit picks up the load and delivers to Chicago, Illinois. When our driver calls in to dispatch and we have a load to pick up in St. Paul, Minnesota, because there is no return load on that day from Chicago, our driver must deadhead from Chicago, Illinois to St. Paul, Minn.; a mileage of approx. 380 miles empty. Being an irregular route carrier; traffic from any given city is not available on a regular basis. This example can happen as many as 10 to 15 times per week; making our deadhead miles extremely high in this traffic lane. We work a great deal on this lane to cut down empty miles. The commodities in this traffic lane are very perishable and therefore must be moved immediately. This operation is rapidly becoming a 12 month operation."

example #30                    "We have been dealing with one shipper in Ohio who requires trucks on a 24 hour notice basis. This shipper calls on Monday morning for 2 trucks on Tuesday morning, to load for Toronto area or Kitchener area. We dispatch 2 tractors and trailers from our terminal in [southern Ontario town] to deadhead to "X" , Ohio. The empty mileage in this case is approximately 465 miles. Outbound freight or movements to the Ohio area are not very frequent and therefore to accomodate this traffic lane we run empty almost 100% of the time. This operation is seasonable at present, and we supply approx. 5 to 10 trucks per week for approx. 6 to 8 months of the year."

4.6 Class "D" Lumber

Percent Empty Highway Miles	24.90%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	-
Percent Light Piggyback Miles	-

example #31                    "Our licence is restricted to exempt commodities and also restricted to specific routes. Difficult to locate return loads.

- (i)    Unloaded in Toronto, Ontario area - no exempt loads for return haul - return empty distance of 235 miles.
- (ii)   Unloaded in small Northern Ontario community - no loads available for return haul in area - sometimes travel up to 200 miles empty.
- (iii)   Unload in Toronto area - pickup required in "X" , Ontario - restriction in licence allows no movement of material to this point - distance of 275 empty miles."

#### 4.7 Class "D" Foodstuffs

Percent Empty Highway Miles	5.34%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	-
Percent Light Piggyback Miles	-

example #32

[Respondent provided details of his Toronto (and vicinity) to Ottawa operations. Basically, these consist of three to four truck load shipments per week into Ottawa with only one load per month out. However, once a week, a load can be picked up 160 miles out of Ottawa to make at least a part of the return trip loaded.]

" - We have had numerous sales people solicit the area for return loads with very little success. Being in the specialized refrigerated field we find most potential customers have their own vehicles or a well established carrier."

example #33

[Respondent provided details of his southern Ontario to northern Ontario operations. Five loads per week, on average, move northbound. A small portion of the return trip is covered by operating a peddle run to northern Ontario stores; however, the majority of the return miles are empty.]

[Respondent then details another southern Ontario to northern Ontario operation where all return trips are empty.]

" - Being a specialized field, we have yet to find any return loads;

" - The only one who does ship refrigerated products to Toronto is [a dairy in the north]. We have approached them several times but with no luck. They have informed us that they can do their shipping cheaper with their own trucks."



example #34                    "All trucks leave Toronto loaded for the greater part with Groceries, Fresh Produce, Dairy Products or Frozen Food for food chain stores to all areas of Ontario daily, except Sunday. Our trailer equipment is 97% Vans, 40% of which are mechanically temperature controlled."

[Respondent concludes by pointing to the difficulties of finding suitable return loads.]

4.8 Class "D" Cement

Percent Empty Highway Miles	39.71%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	
Percent Light Piggyback Miles	

example #35                    "We distribute bulk cement in pneumatic dry bulk tankers for "Z" Co. from "X" to points in northern Ontario on Highway 17. We operate five of these bulk tankers. There is no back-haul for this specialized equipment. We have looked into the possibility of wood-chips from the "Y" area, but we have found, after extensive research that this is not possible. In order to operate as efficiently as possible we are, this winter, changing over from three-axle to four-axle bulk tankers which will have a pay load of 43 tons."

4.9 Class "D" Steel

Percent Empty Highway Miles	54.48%
Percent Empty Piggyback Miles	0.00%

Percent Light Highway Miles -

Percent Light Piggyback Miles -

example #36

[Respondent gave very detailed example of steel movements from Hamilton to eastern Ontario towns. At that point, 50% of units returned empty. The remaining 50% travelled empty 75 to 150 miles to obtain loads of lumber.]

"Steel loads to "X" and "Y" could be tripled but due to the imbalance of freight we hesitate to move all the freight available."

[Respondent calculated that this particular part of his operation incurred 27,144 empty miles in the last year for a total waste of 6,786 gallons of fuel and 600 hours of labour.]

example #37

[Respondent gave detailed example of steel movements from Hamilton to western Ontario town. Total empty miles on the return trip amounted to 494,000, and, by the respondent's calculations, a waste of 123,500 gallons of fuel and 10,950 labour hours.]

example #38

"Due to our type of authority, we are restricted from hauling steel - we are primarily steel haulers - under forty feet unless a mixed load where part or all of the load is forty feet or over. There are points where steel under forty feet long is available for our return trip but this material is unavailable to us, particularly on our "D" in Ontario, consequently 95% of our return trips within Ontario are empty.

"Our "X" into Quebec, permits us to haul loads out of Montreal, therefore approximately 50% of our return trips from that area are loaded (with long steel only).

"Although we have authority from Buffalo over the Niagara Gateway for steel, into Canada - we do not have the reciprocal authority to take steel from points in Ontario and Quebec, into Buffalo, for furtherance to points in the States. In this case, all our trips into the Buffalo area are with empty equipment - 100%.

"I may add that our equipment is "open top trailers", available and acceptable to all steel shippers, but because of our forty feet restriction, we are not permitted to offer it to all steel shippers.

"We have just recently (Jan. 4 - 7th, 1977) been through a hearing with the Ontario Transport Board to correct this type of authority, for very many obvious reasons, but were opposed by numerous carriers, which leaves us in grave doubts as to its outcome.

"It is a problem with us that must be corrected, as soon as possible, by some means or other."

#### 4.10 Class "D" Automobiles

Percent Empty Highway Miles	24.05%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	
Percent Light Piggyback Miles	

example #39

"We mainly receive product at Detroit, Windsor, St. Thomas, Lewiston, Oakville, Brampton, Toronto, Oshawa, Montreal and Ste. Therese.

"Any equipment loaded to points other than the above would normally result in empty return or furtherance to a required loading point. Only on a very small percentage of trips into other areas is a used or damaged vehicle available as return freight."

4.11 Class "D" Freight

Percent Empty Highway Miles	50.00% (1)
Percent Empty Piggyback Miles	0.00% (1)
Percent Light Highway Miles	
Percent Light Piggyback Miles	

example #40                      "Our out bound loads are Food Stuffs requiring temperatures of 0° to 35°F.

                                     "We return empty from areas such as Soo, Sudbury, North Bay, Bancroft, Ottawa. The reason - Freight in these areas is such that it is not practical to load on a Refrigerated Trailer. e.g. Bulky goods, Lumber, Steel or just no return freight. We return empty at times from other areas that freight is available such as Canned Goods. The reason - Truck finishes out bound load too late to make pick up that day.

                                     "It is not practical to hold the driver over as it takes the next day to load and return to Toronto and the following day to deliver the load. This is too long to tie up an expensive Refrigerated Trailer on this commodity."

4.12 Class "D" Mobile Homes

Percent Empty Highway Miles	}	No data available
Percent Empty Piggyback Miles		
Percent Light Highway Miles		
Percent Light Piggyback Miles		

example #41 [Respondent detailed examples of trips where empty miles were greater than 50% of total. For example, on a Trenton to Kingston move, vehicle had to move from Toronto to Trenton empty and then Kingston to Toronto empty.]

4.13 Class "E"

Percent Empty Highway Miles	50.00%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	
Percent Light Piggyback Miles	

example #42 "This company is employed exclusively in milk transportation. The produce is picked up at farms situated in the "X" county and "Y" Regional area by 2000 - 2700 gallon tank trucks, then transferred to larger (5500 gal) tractor-trailer tankers at assembly points, for furtherance to Metro Toronto processing plants.

"The farm pickup units must travel from home depot to route empty. Each unit then loads the milk from about 8 farms and travels on to the transfer location.

"The tractor-trailer units (3), after loading from the smaller farm pickup trucks, proceed to Toronto. Their return trip is empty.

"P.C.V. licence, Dept. of Agriculture regulations and scheduling for farm pickups and receiving plants prohibit any backhaul in milk trailer units from Metro area."

4.14 Class "F" Brick

Percent Empty Highway Miles	50.00%
Percent Empty Piggyback Miles	0.00%



example #43                    "We deliver to all points in Ontario and not on regular routes. We never know where we will go the next day so it is hard to arrange return loads."

example #44                    "All our trucks are equipped with special loading and unloading equipment and are not suitable for any other shipments except lumber, but we do not have the P.C.V. licence authority for it."

#### 4.15 Class "F" Livestock

Percent Empty Highway Miles	50.00%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	-
Percent Light Piggyback Miles	-

example #45                    "One livestock Possum Trailer with slaughter cattle from Toronto Stock Yards to Montreal Packing Plant.

"There is no return load as this is a slaughter plant and has no live return loads."

example #46                    "One livestock Possum Trailer empty from [a southern Ontario town] to Thunder Bay to pick up feeder cattle to bring back to Western Ontario. Most times these calls come in during night hours with no time to look for a load going West. There is very little movement of livestock from Eastern Canada to Western Canada."

#### 4.16 Class "H"

Percent Empty Highway Miles	18.72%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	11.59%
Percent Light Piggyback Miles	0.00%

example #47

[Respondent supplied examples of three recent shipments to the Kincardine - Port Elgin area.]

"All shipments hauled into this area result in empty miles back to Toronto. This is due to the fact [that] this is a Hydro installation and employees are being moved in and very few [are] being moved out."

4.17 Class "K"

Percent Empty Highway Miles	27.66%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	17.86%
Percent Light Piggyback Miles	0.00%

example #48

"We supply a heavy and specialized transportation service, operating specialized equipment for the transportation of goods which by their size, weight, shape or nature require specialized equipment, for example, boilers, transformers, machinery, construction equipment and fabricated structures. In most cases, the service is supplied on an exclusive use basis over all routes to built up areas as well as remote areas. For your assistance, we have broken down the empty miles in five categories.

a) Loaded miles within the province of Ontario result in approximately 90% of the return miles being travelled empty.

b) Loaded miles from points in Ontario to Western Canada result in approximately 65% of the return miles being travelled empty.

c) Loaded miles from points in Ontario to the Maritime provinces result in approximately 85% of the return miles being travelled empty.

d) Loaded miles from points in Ontario to Quebec result in approximately 10% of the return miles being travelled empty.

e) Loaded miles from the Niagara and St. Clair United States gateways to points in Ontario result in approximately 10% of the return miles from points in Ontario to the subject gateways being travelled empty."

[The respondent then supplied several pages of reasons for the occurrence of these empty miles. The following is a summary.]

- a) Within Ontario - competition from other "K" carriers; competition from contractors illegally acting as for-hire carriers; competition from general commodity carriers who really do not know how to handle this traffic; pseudo lease operators; licence restrictions; and the impossibility of finding return loads for the extra special equipment which sometimes has to be used.
- b) Ontario-Western Canada - empty miles are less because carrier has more time to arrange a return load.
- c) Ontario-Maritime - very little traffic originates in Maritimes, although some construction equipment originates at sea ports, and sometimes it is possible to pick up a load in Quebec on the return trip.
- d) Ontario-Quebec - empty miles are low because (among other reasons offered) "the province of Quebec only allows size and weight commodities to be handled by the heavy specialized carrier." Further, Quebec is very strict with its enforcement.
- e) Ontario-U.S.Gateways - traffic imbalance.

#### 4.18 Class "T"

Percent Empty Highway Miles	50.00%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	-
Percent Light Piggyback Miles	-

no examples

4.19 Private Carriage

Percent Empty Highway Miles	24.40%
Percent Empty Piggyback Miles	0.00%
Percent Light Highway Miles	31.17%
Percent Light Piggyback Miles	0.00%

example #49	"Toronto - Timmins	34.88% empty miles
	Toronto - Ottawa	75.00% empty miles
	Toronto - Montreal	0.00% empty miles

"Goods are distributed from Toronto and the units leave fully loaded. The number of empty miles is determined by the number of suppliers located in Timmins, Ottawa and Montreal.

example #50	"Our trucks travelled 20,000 miles west to British Columbia, we do not purchase anything in the west for our own use so 10,000 is empty return miles."
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example #51	"Some trucks are not fully loaded when they leave the home terminal because there are not enough customers in some areas to make a full load and still provide good service.
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example #52	"Ontario: our trucks travelled 90,000 miles [in Southern Ontario and Southern to Northern Ontario]. We purchase many items for our own use in the Toronto area so we have some trucks returning full and light miles from these local trips. [33,000 empty or light miles, and 12,000 full miles on return trips.] Some of these trucks are not fully loaded when they leave "X" as we do not have enough customers in some of these areas to make a full load and still give them good service.
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example #53

"We are a private carrier and only carry Company owned goods to our customers across Canada. The only time our trucks have any return load is when there is something the Company has purchased for its use in the manufacturing plant. We manufacture Ice Cream and Frozen Speciality Novelties and distribute these across Canada."

example #54

"Our trucks travelled 140,000 miles from [Southern Ontario town] to the east coast. We purchase some supplies in New Brunswick and Montreal for our own use: 60,000 miles of this are empty or light miles, 10,000 miles of this are full miles."



## APPENDIX A


### SURVEY QUESTIONNAIRE

555 Dixon Road  
Rexdale, Ontario M9W 1H8  
Telephone (416) 247-7131

To: The Individual Addressed

Dear Sir:

Re: Select Committee on Highway  
Transportation of Goods



The interim report of the Ontario Select Committee on Highway Transportation of Goods was tabled in the Legislature a few weeks ago. Most of the major recommendations are in accord with views presented by the OTA, and it is hoped that the final report of the Committee will further substantiate our position.

The issue of empty and light miles has become more important to the Committee than originally anticipated. We have promised to provide a further report on this subject by January 31, in time for consideration by the Committee before it submits its final report.

The attached questionnaire is therefore being sent to a select group of OTA members, representing a cross-section of the Ontario trucking industry. We ask you to give it your immediate consideration.

In this short survey we are less concerned about strict statistical data, and more about why empty and light miles occur in the trucking industry. Part C especially reflects this approach.

Part A merely provides some indication of what empty mile records your firm maintains. Part B requests detailed information on your empty and light miles over the latest 12-month period.

In answering Part B do not attempt to reconstruct records that you do not maintain normally.

Part C is the most important section of the survey, as it provides for specific examples of empty and light miles in your operation. You are asked to elaborate on three examples in as much detail as possible, showing why empty or light miles occur in these cases.

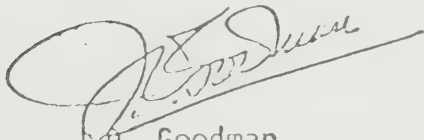
Each firm will have unique answers to the questionnaire, especially Part "C". For this reason our survey will include personal telephone contact with each participant.

Please complete the questionnaire in as much detail as possible, with special emphasis on Part C. Do not return it to us until we have contacted you in the weeks of January 3 - 14. After telephone contact has been made, the forms should be returned directly to our independent consultants, R.K. House and Associates, as indicated on the questionnaire.

All responses will, of course, be treated in strict confidence.

Your cooperation is appreciated.

Yours very truly,

A handwritten signature in dark ink, appearing to read "J.O. Goodman", written over a horizontal line.

J.O. Goodman,  
Executive Vice-President.

JOG:dk  
Encl.

December 21, 1976

P.S. The OTA contact for information about this survey is Bob Bentley,  
247-7131.

ONTARIO TRUCKING ASSOCIATION.

Confidential Survey on Empty and Light Miles

December, 1976

A. BACKGROUND QUESTIONS

1. Does your firm maintain any records on:

YES

NO

Empty inter-city miles,

\_\_\_\_\_

\_\_\_\_\_

OR

Empty inter-city trips?

\_\_\_\_\_

\_\_\_\_\_

Total inter-city miles?

\_\_\_\_\_

\_\_\_\_\_

Load factors (percent of vehicle loaded)  
by inter-city lanes?

\_\_\_\_\_

\_\_\_\_\_

2. Can you separate, or explain, empty miles by either

(i) type of equipment? YES \_\_\_\_\_ NO \_\_\_\_\_

OR

(ii) type of PCV licence? YES \_\_\_\_\_ NO \_\_\_\_\_

3. If your firm holds "X" authority, can you separate, or explain, empty miles by both intra and extra-provincial traffic? YES \_\_\_\_\_ NO \_\_\_\_\_

EVEN IF YOU DO NOT KEEP COMPLETELY DETAILED RECORDS ON EMPTY AND LIGHT MILES, PLEASE GO ON TO PARTS B AND C.

Vehicle type, PCV licence, or traffic lane \_\_\_\_\_

B. QUESTIONS ON EMPTY AND "LIGHT" MILES

Note: Additional copies of Part B are included in the hope that you do separate empty miles by vehicle type, by PCV licence, or by traffic lane. If not, then please provide your answers on one sheet and discard the extras.

1. MILES TRAVELLED IN LATEST 12 MONTHS ENDING \_\_\_\_\_ 1976

NOTE: Please report on all highway vehicles moving under your firm's authority: owned, leased, broker, etc.

- i) TOTAL INTER-CITY HIGHWAY MILES (EXCLUDING PIGGYBACK) \_\_\_\_\_ miles
- ii) TOTAL PIGGYBACK MILES \_\_\_\_\_ miles
- iii) AVERAGE NUMBER OF POWER UNITS OPERATED ON THE HIGHWAY ~~FOR THE~~ FOR THE LATEST 12 MONTHS. \_\_\_\_\_ units

2. EMPTY MILES IN LATEST 12 MONTHS

- i) TOTAL EMPTY INTER-CITY HIGHWAY MILES, \_\_\_\_\_ miles
- ii) OF WHICH \_\_\_\_\_ WERE POWER UNIT ONLY (BOBTAILING) \_\_\_\_\_ miles
- iii) TOTAL EMPTY PIGGYBACK MILES: \_\_\_\_\_ miles

3. "LIGHT" MILES IN LATEST 12 MONTHS.

We have arbitrarily defined "light" as being loaded to less than 25% of the vehicle's allowed weight or cubic capacity, but not empty. If you have mileage figures based on another definition, please give those figures, and the definition used.

- (i) Total "light" inter-city highway miles. \_\_\_\_\_ miles

Definition of "light":

- (ii) Total "light" piggyback miles. \_\_\_\_\_ miles



C. COMMENTS ON YOUR EMPTY AND "LIGHT" MILES

Do you have particular routes, or commodities, that experience an especially high empty or light load factor? (A typical example might be a small community with a natural imbalance of inbound and outbound freight, or a commodity requiring special transport equipment not suited to other uses.)

If so, please elaborate on three specific examples. Give details on communities involved, commodities carried on headhaul and backhaul, and special equipment needed. In each case try to provide the full, light and empty miles involved over the latest 12-month period used by you earlier in the questionnaire. Please use the attached sheets as required, to provide as much detail as possible.

The purpose of this section is to gather detailed examples that will illustrate to the Select Committee the variety of conditions experienced in the trucking industry, and the many factors that can cause empty or light miles.

Please complete this questionnaire now, hold until you have been contacted by telephone, and then use the enclosed envelope to mail it to:

R.K. House and Associates Ltd.,  
6271 Dorman Road, Suite 5,  
MISSISSAUGA, Ontario L4V 1H1 (416) 677-7998

Mark envelope:

Attention Mr. F. Nix,  
CONFIDENTIAL

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ AREA CODE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

EXAMPLES OF EMPTY AND LIGHT MILES

INTERSTATE COMMERCE COMMISSION  
BUREAU OF OPERATIONS

MR. ROAD DRIVER

Our offices receive calls daily asking, "What's an exempt commodity?"; "Do I need authority to haul that?"; "As long as it's grown, it's exempt, right?" Well, not necessarily.

This pamphlet has been prepared by the Interstate Commerce Commission, Bureau of Operations to help you understand better whether it's "Exempt or Not." In so doing, we have attempted to eliminate, where possible, legal terms, references to court citations, sections of the Interstate Commerce Act, and any other terminology so that we can get right to the meat of the problem.

You must remember, however, that a commodity is **not exempt** if it is hauled in a vehicle which, at the same time, is hauling for compensation commodities not within the exemption.

The fact that a particular commodity is not in the list does not mean that it is either within or not within the exemption. By comparison, it may be possible to form a conclusion as to the status of commodities similar to those listed.

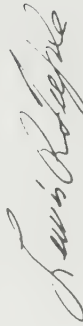
This composite commodity list is made up from various sources. The following words which appear at the end of the commodity description will indicate the sources:

1. "Law" — Administrative Ruling No. 107 (49 CFR 1047.25) which the Transportation Act of 1958 incorporated into Section 203(b)(6) of the Act but with certain changes.

2. "Law-Ruling 110" — Administrative Ruling No. 110 which explained the changes in Ruling No. 107 made by the Transportation Act of 1958.

3. "Case No. " — Commission and court decisions since 1958. These are identified by the designation "Case No. ." The title and citation of the decision is shown in the Case List which follows the Commodity List.

Should you have further questions regarding exempt or nonexempt commodities or, for that matter, questions regarding interstate transportation, please feel free to contact any one of our listed field offices.



L. R. Teeple  
Acting Director

COMPOSITE COMMODITY LIST

of Administrative Ruling No. 119

**Additives.** Ruling No. 107 reflects the policy of allowing minor amounts of additives, since such things as vitamins in milk, seasoning or sweetening in foods, coated Christmas trees, etc. are shown as exempt. Informal rule of thumb is that no more than 5 percent non exempt additives are allowable. - Bureau

**Advertising matter,** in reasonable amounts, transported along with exempt commodities to which it relates, not considered as affecting the exempt nature of shipment. - Bureau

**Advertising matter,** comprising 20-30 cases transported with 500 cases of tulip bulbs - Exempt - Bureau

**Altalfa,** see Feeds

**Animal fats** - Not exempt - Law

**Animals,** see Livestock

**Bagged commodities** - Placing exempt commodities in bags does not affect their exempt status. - Law

**Bagging,** scrap. (worn jute bagging) - Not exempt - Bureau

**Bananas** - Not exempt - Law-Ruling 110

**Bark,** see Forest Products

**Barley,** see Grains

**Bees** - Exempt - Law

**Beeswax,** crude, in cakes and slabs - Exempt - Law

**Beet pulp,** see Feeds

**Beets,** sugar - Exempt - Law

**Berries,** See Fruits

**Birds**

•Canaries and parakeets - Not exempt - Bureau

•Edible, see separate heading: Poultry

•Feathers, see separate heading: Feathers

•Pigeons, racing - Not exempt - Law

•Birdseed, see separate heading: Feeds

**Bones,** animal - Not exempt - Bureau

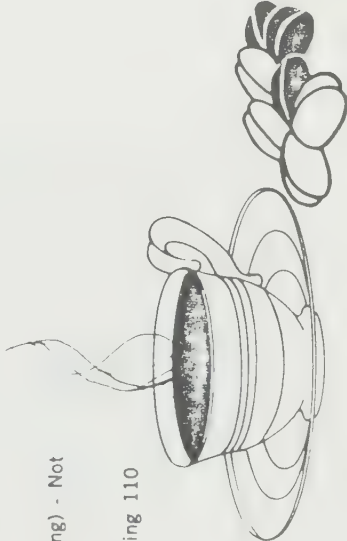
**Bran,** see Feeds

**Broom corn,** threshed and baled - Exempt - Law

**Bulbs,** see Horticultural Commodities

**Butter** - Not exempt - Law

**Buttermilk** - Exempt - Law



**Candied apples** (fresh apples on a stick dipped in taffy) - Not exempt - Bureau

**Caseln,** derived from milk - Not exempt - Case No. 1

**Canned fruits and vegetables** - Not exempt - Law

**Carnauba wax** as imported in slabs or chunks - Not exempt - Law

**Castor Beans** - Exempt - Law

**Castor pomace** (cake remaining after extraction of oil from castor beans) - Not exempt - Bureau

**Cattle,** live, see Livestock

**Cattle,** slaughtered - Not exempt - Law

**Charcoal** - Not exempt - Law

**Cheese**

•Cheese - Not exempt - Law

•Cheese, cottage - Not exempt - Law

•Cheese, cottage, curd, in bulk - Not exempt - Bureau

•Cheese, cream - Not exempt - Law

•Chicle (a gum obtained from latex of trees) in form normally shipped, i.e. purified and neutralized - Not exempt - Bureau

**Christmas trees,** plain, sprayed, or coated - Exempt - Law

**Cider,** apple, and cider vinegar - Not exempt - Bureau

**Citrus fruits,** see Fruits

**Clay** - Not exempt - Bureau

**Coal** - Not exempt - Law

**Cocoa bean shells,** in any form - Not exempt - Bureau

**Cocoa beans** - Not exempt - Law-Ruling 110

**Coconut,** see Nuts

**Coffee**

•Coffee beans - Not exempt - Law-Ruling 110

•Coffee, instant - Not exempt - Law

•Coffee, roasted - Not exempt - Law

**Compost**

•Compost, composed of manure and straw sweepings, dried, disintegrated, and decomposed - Exempt - Bureau

•Compost, mixture of manure, straw or rice hulls, but **not** sawdust - Exempt - Bureau

•Compost, product, a mixture of processed garbage and sewage sludge - Exempt - Bureau

•Compost, mixture of manure and sweepings with water and bacterial agents to hasten fermentation, used as a growth medium for mushrooms - Not exempt - Bureau

Containers-Dinners

Containers

- Containers, crates, and boxes which have been used in the movement of exempt commodities, which have been reconditioned and sold from stock to new purchasers - Not exempt - Bureau
- Containers, crates, and boxes which have been used in the movement of exempt commodities, and are being returned for reuse - Exempt - Law
- Containers, new, for use in shipping exempt commodities - Not exempt - Law

**Copra meal** - Not exempt - Law

**Corn**, See Grain

**Corn cob**

- Corn cobs - Exempt - Law
- Corn cobs, ground - Exempt Law

**Corn fodder** - Exempt - Law

**Cottage cheese**, see Cheese

**Cotton**

- Cotton, carded but not spun, woven or knitted - Exempt - Law
- Cotton, ginned or unginned - Exempt - Law

**Cotton felt**, used in mattresses, etc.

- consisting of scraps of raw cotton, blended and carded, but not otherwise processed - Exempt - Bureau

**Cotton lap** (Baled cotton, blended,

- cleaned and formed into rolls preparatory to milling) Exempt - Bureau

**Cotton linters** - Exempt - Law

**Cotton moles** (fibers removed from cotton seed after ginning and removal of linters) - Exempt - Bureau

**Cotton waste consisting of bits of string**, thread, and yarn - Not Exempt - Bureau

**Cotton waste consisting of scraps of cotton fibre not spun**, woven or knitted - Exempt - Law

**Cotton yarn** - Not exempt - Law

**Cottonseed**

- Cottonseed, whole - Exempt - Law
- Cottonseed, dehulled - Exempt - Law

**Cottonseed cake** - Not exempt - Law

**Cottonseed hulls** - Exempt - Law

**Cottonseed meal** - Not exempt - Law

**Crates**, see Containers

**Cream**, see Milk

**Cream cheese**, see Cheese

**Dehydrated**, see commodity name: Fruits, Vegetables, Eggs, etc.

**Diatomaceous earth** - Not exempt - Law

**Dinners**

- Dinners, frozen - Not exempt - Law (But see next two entries)
- Dinners, chicken, cooked and frozen - Exempt - Bureau (Based on Case No. 26)
- Dinners, seafood, frozen - Exempt - Law - Ruling 110

**Dried**, see commodity name: Fruits, Vegetables, Eggs, etc.

**Eggs**

- Albumen, fresh, liquid - Exempt - Law
- Albumen, fresh, liquid, pasteurized - Exempt - Bureau
- Dried - Exempt - Law
- Frozen - Exempt - Law
- Hard boiled, pickled, packed in vinegar and water with spices - Not exempt - Bureau
- In shell - Exempt - Law
- Liquid, whole or separated - Exempt - Law
- Mixture of 90% powdered and 10% syrup and salt, dried - Not exempt - Bureau
- Oiled - Exempt - Law
- Omelet mix consisting of fresh broken eggs and milk with minute amounts of salt and pepper and seasoning, packaged and frozen - Exempt - Bureau
- Powder, dried - Exempt - Law
- Shelled - Exempt - Law

•Shells, pulverized, for medical use (designated "pure calcium carbonate") - Not exempt - Bureau

•Whites, frozen - Exempt - Bureau

•Whole, with added yolks, dried - Exempt - Bureau

•Whole, frozen with added yolks - Exempt - Bureau

•Whole, frozen, standardized by subtraction of white - Exempt - Bureau

•Yolks, dried - Exempt - Law

•Yolks, fresh, liquid - Exempt - Law

•Yolks, frozen - Exempt - Bureau

•Yolks, with 10% salt or sugar added -

Not exempt - Bureau

Dried-Feeds

**Fats**, animal - Not exempt - Law

**Feathers**

- Feathers, cleaned and ground, not further processed, nothing added (sometimes referred to as "feather meal.") - Exempt - Bureau
- Feathers, ground, combined with dehydrated poultry offal - Exempt - Bureau

**Feeds**

- Alfalfa, dried, chopped, and pressed into cubes and wafers by machine, after dumping with water - Exempt - Bureau
- Alfalfa, dried, etc., as above, but by a steam process - Not exempt - Bureau
- Alfalfa pellets - Not exempt - Law
- Beet pellets - Not exempt - Bureau
- Beet pulp - Not exempt - Law
- Bird gravel - Not exempt - Bureau
- Bird seed, containing milo, millet, wheat chaff, and peanut heart - Exempt - Bureau
- Bird seed bell, seed (millet, wheat, milo, and sunflower seed) mixed with an adhesive, such as corn syrup or wood glue, fitted with a wire hanger, and molded into a bell shape, for feeding wild birds - Exempt - Case No. 19
- Bran shorts - Not exempt - Law
- Corn gluten - Not exempt - Law
- Cottonseed products, see separate heading: Cottonseed
- Distilled corn grain residues, with or without solubles added - Not exempt - Law



Feeds-Fish

- Formulas composed of hominy feed, beet pulp, corn gluten, wheat middlings, cane molasses and minerals - Not exempt - Bureau
- Hamster and gerbil food with 9% soy bean and alfalfa meal added - Not exempt - Bureau
- Hominy feed - Not exempt - Law
- Meal, see separate heading: Meal
- Middlings - Not exempt - Law
- Oat hulls, ground - Exempt - Law
- Parrot Food, mixture of exempt commodities - Exempt - Bureau
- Pelletized ground refuse screenings - Not exempt - Law
- Rice bran - Exempt - Law
- Rice hulls, anhydrous ammonia added providing a 10% protein source as feed - Not exempt - Bureau
- Rice hulls, ground or unground, nothing added - Exempt - Bureau
- Rice mill feed pellets - Status pending - Case No. 32
- Screenings, feed - Exempt - Law
- Soya bean husks - Exempt - Case No. 16
- Wheat bran - Not exempt - Law
- Wheat mixed feed (mixture of coarse outer covering of wheat kernel, wheat germ, wheat flour, and offal of the tail of the mill) - Not exempt - Case No. 2

Fertilizer, commercial - Not exempt - Law

Fibers

- Abaca (manila hemp), piassava, ixtle, rattan, and palm and grass fibers - Exempt - Case No. 3
- Clippings resulting from rope making - Not exempt - Bureau
- Coir yarn, made from coconut fibre, is manufactured by spinning - Not exempt - Case No. 3
- Flax - Exempt - Law
- Hemp - Not exempt - Law Ruling 110 "Hemp" specifically made not exempt by amendment of Section 203(b)(6) means true hemp (cannabis sativa) or its fiber, and does not embrace similar plants or plant fibers commonly referred to by name. Case No. 3
- Jute in bales - Exempt - Law
- Jute fabric, product of a textile operation - Not exempt - Bureau
- Ramie - Exempt - Law
- Kapok, in loose bales, not processed beyond separation of fibers from seeds - Exempt - Bureau
- Palmleaf, not processed beyond separation from leaf, cleaning, combing and baling - Exempt - Bureau
- Ramie Tops, consisting of long fibers of the ramie plant - Exempt - Bureau
- Raymond or synthetic fibers, or mixtures thereof (waste materials or otherwise) - Not exempt - Bureau
- Sisal, not being a true hemp - Exempt- See explanation under "Hemp" above

Fish (including shell fish)

- General. Frozen, quick frozen, and unfrozen fish and shell fish in the various forms in which it is shipped, such as live fish, fish in the round, beheaded, and gutted fish, filleted fish, beheaded shrimp, and oysters, clams, crabs, and lobsters, with or without shells,

Fish

- Dinners, cooked or uncooked, frozen or fresh - Exempt - Law-Ruling 110; Case No. 24
- Fish, processed by cleaning, scaling, and adding a small amount of salt - Exempt - Case No. 4
- Fish, ground, frozen into blocks - Exempt - Bureau
- Fish luncheon meat of smoked ground fish formed into loaves - Not exempt - Bureau
- Fish, lightly salted or spiced, requiring refrigeration to retard deterioration - Exempt - Bureau
- Fried fish fillets, oysters, or scallops, frozen or fresh - Exempt - Law Ruling 110; Case No. 24
- Frogs, live or dressed - Exempt - Law
- Frog and turtles, placed in formaldehyde to prevent or retard deterioration during transportation (but not as a preservative as that term is normally used) and used in substantially the same manner as live specimens - Exempt - Bureau
- Frozen, see General above, and individual listings
- Hermetically sealed in containers as a treatment for preserving - Not exempt - Law
- Hermetically sealed in containers for cleanliness only, preservation attained by refrigeration - Exempt - Law
- including crab meat and lobster meat - Exempt - Law
- Breaded, cooked, or uncooked, frozen or fresh- Exempt - Law Ruling 110; Case No. 24
- Cakes, codfish, cooked or uncooked frozen or fresh - Exempt - Law-Ruling 110; Case No. 24
- Canned, as a treatment for preserving - Not exempt-Ruling 110; Case No. 24
- Clam juice or broth, cooked or uncooked, frozen or fresh - Exempt-Ruling 110; Case No. 24
- Condensed fish, solubles (obtained by condensing the aqueous portion of the residue of pressing oil from fish) - Not exempt - Bureau
- Cooked or partially cooked fish or shellfish, frozen or fresh - Exempt - Law - Ruling 110; Case No. 24
- Crab offal (residue after extraction of meat from crabs including shells, dried and ground) - Exempt - Bureau
- Crabmeat, pasteurized, placed in hermetically sealed containers for purpose of preservation - Not exempt - Bureau
- Crabmeat, pasteurized, sealed for purposes of cleanliness only, preservation accomplished by refrigeration - Exempt - Bureau
- Croquettes, salmon, cooked or uncooked, frozen or fresh - Exempt - Law-Ruling 110; Case No. 24
- Deviled crabs, clams, or lobsters, cooked or uncooked, frozen or fresh - Exempt - Law-Ruling 110; Case No. 24

## Fish-Flour

- Meal - Not exempt - Law
- Offal (inedible portions of fish not further processed) - Exempt - Law
- Oil from fishes - Not exempt - Law
- Preserved, or treated for preserving, such as smoked, salted, pickled, spiced, corned or kippered - Not exempt - Law
- Residue remaining after extraction of oil from fish - Not exempt - Bureau
- Salmon eggs, brined and packed in salt and formaldehyde solution in vacuum sealed jars - Not exempt - Bureau
- Salmon eggs, frozen, not pickled or brined or otherwise treated for preservation - Exempt - Bureau
- Salted, as a treatment for preserving - Not Exempt - Law
- Scraps, frozen, granulated, and pressed into blocks, for cat food - Exempt - Bureau
- Sea lions and walrus - Not exempt - Bureau
- Seafood casseroles and dinners of which fish or shellfish is the principal ingredient - Exempt - Bureau
- Seal blubber - Not exempt - Bureau
- Seal skins - Not exempt - Bureau
- Shells of sea creatures, other than those mixed with other refuse as "offal" - Not exempt - Bureau
- Shells, oyster, moving to market for use in button making - Not exempt Law
- Shells, oyster, ground - Not exempt - Case No. 28

## Flour-Forest Products

- Tapioca flour, produced in same manner as wheat flour - Not exempt - Bureau
- Flowers and flower plants**, see Horticultural commodities
- Fodder**, corn and sorghum - Exempt - Law
- Forage**, see Hay and Feeds
- Forest products**
  - Bark - Exempt - Law
  - Bark - Boiled to clean and soften - Exempt - Law
  - Bark, raw, broken up by means of hammermill, or shredded, ground, or crushed, graded, and bagged - Exempt - Bureau
  - Fence pickets, split by hand from bolts, edged and pointed - Not Exempt - Bureau
  - Fence posts and rails, consisting of logs peeled and cut to length, the posts having holes drilled in them for insertion of rails, and the rails being split and sharpened at both ends - Not exempt - Case No. 6



- "Firelog": wood shavings, sawdust, low grade petroleum, used in place of firewood - Not exempt - Bureau
- Greenery - Exempt - Law
- Growing, see separate heading: Horticultural Commodities
- Hickory "wheels": short lengths cut from trees or logs - Exempt - Bureau
- Hickory meal: sawdust or powdered hickory wood - Not exempt - Bureau

- Shrimp cocktail (Shrimp cooked and placed in glass jars with special sauce and seasoning and kept under refrigeration) - Exempt - Bureau
- Soup or chowder containing a relatively small proportion of fish or shellfish in proportion to other ingredients which are not within the exemption - Not exempt - Bureau
- Stew, consisting of raw oysters or clams, milk and seasoning, frozen but uncooked - Exempt - Law
- Sticks, cooked or uncooked, frozen or fresh - Exempt - Law-Ruling 110
- Sticks, frozen, cooked, breaded - Exempt - Case No. 5
- Tuna Pies, Frozen - Exempt - Bureau
- Turtles, sea or fresh water - Exempt - Law
- Whale meat, fresh - Exempt - Law

**Flagstone** - Not exempt - Law

**Flax fiber**, see Fibers

**Flaxseed**, whole - Exempt - Law

**Flaxseed meal** - Not exempt - Law

**Flea**, live sterile screwworm, used in screwworm eradication program - Exempt - Bureau

## Flour

- Flour - Not exempt - Law
- Corn flour, extruded and hammered to a flour consistency - Not exempt - Bureau
- Corn meal flour - Not exempt - Bureau
- Mustard flour, consisting of seeds ground or milled and bolted - Not exempt - Bureau

Forest Products

- Holly sprigs and cuttings - Exempt - Law
- Leaves - Exempt - Law
- Leaves, sisal, husks and moisture removed - Exempt - Law
- Lignin sulphamate obtained by cooking wood chips in a chemical solution and used as a road binder - Not exempt - Bureau
- Logs and pilings impregnated with a preservative, usually creosote - Not exempt - Case No. 7
- Mesquite brush, ground, dehydrated and packaged in plastic bags - Exempt - Bureau
- Mesquite brush, twigs and debris burned off - Exempt - Law
- Mine timbers or cants, comprised of 8 foot lengths of fir, rough-sawn, square cornered - Not exempt - Bureau
- Mistletoe - Exempt - Law
- Myrobalans, as imported in natural state - Exempt - Law
- Palmyra stalk fibers (fronds from palm leaves) - Exempt - Law
- Peat moss, dried, shredded, baled - Exempt - Law
- Peat or peat moss, in bags or boxes - Exempt - Bureau (See also Case No. 31)
- Peat moss flower pots impregnated with wetting agent - Not exempt - Bureau
- Peat, for use as an organic fertilizer, wet with water and other solutions, de-composed in a pressure vessel and dried - Not exempt - Case No. 31
- Peeler cores, composed of the center portions of logs remaining after plywood is cut therefrom - Exempt - Case No. 30
- Pilings, wooden, untreated - Exempt - Case No. 9

Forest Products-Fruits and Berries

- Shakes and shingles, whether split by hand or by machine - Not exempt - Case No. 12
  - Shingle bolts - Exempt - Law
  - Slabwood produced from sawmill operations - Not exempt - Case No. 13
  - Spanish moss - Exempt - Law
  - Sphagnum moss - Exempt - Law
  - Spices, see separate listing: Spices
  - Tanbark or tanwood, residue after tanning dye is extracted from bark, roots, or wood by means of extreme pressure and hot water, used as a mulch - Not exempt - Bureau
  - Tanning extracts (wattle, chesnut, guebracho) produced by leaching bark, clarifying the extract and concentrating it in vacuum evaporators - Not exempt - Bureau
  - Timber (rough logs or bolts) cut in random lengths, with bark removed - Exempt - Bureau
  - Trees
    - Christmas, plain, sprayed, or coated - Exempt - Law
    - Cut to length, peeled, or split - Exempt - Law
    - Growing, see Horticultural commodities
    - Sawed into lumber - Not exempt - Law
    - Trimming from logs and bolts, except bark - Not exempt - Case No. 11
    - Valonia, as imported in natural state - Exempt - Law
    - Wood chips for making wood pulp - Not exempt - Law
    - Wood cut into short crosswise lengths for firewood (not sawed lengthwise) - Exempt - Bureau
- Wreaths of holly or other natural material with small amount of foundation or decorative material - Exempt - Law
- Frogs, see Fish**
- Frozen, see commodity name: Fruits, Vegetables, Fish, Poultry, etc.**
- Fruits and Berries**
- Apple peels and cores ground, but not otherwise processed - Exempt - Bureau
  - Apple pomace (substance remaining after extraction of juice) - Not exempt - Bureau
  - Apples, fresh, unfrozen, peeled, cored, sliced and dipped in brine solution to retain freshness - Exempt - Bureau
  - Bagged - Exempt - Law
  - Bananas, fresh, dried, dehydrated, or frozen - Not exempt - Law-Ruling
  - Blueberries, incidentally frozen while being maintained in low temperature storage, allowed to thaw during transportation - Exempt - Bureau
  - Canned - Not Exempt - Law
  - Cherries in sulphur dioxide "brine" for purpose of holding them in fresh state until they can be processed for marketing, which processing includes "debrining" - Exempt - Case No. 14
  - Cherries, maraschino type, resulting from further processing of cherries mentioned just above - Not exempt - Case No. 14



Fruits and Berries

- Chopped glazed fruit (similar to that used in fruit cakes) - Not exempt - Bureau
- Citrus fruit salad, fresh, chilled - Exempt - Bureau
- Citrus fruit sections, fresh, cold-packed or semi-frozen - Exempt - Law
- Citrus fruit sections, frozen - Not exempt - Law-Ruling 110
- Citrus fruit sections, not frozen, packed with sugar, water, citric acid, and benzoate of soda, additives being 6% to 10% of total - Not exempt - Bureau
- Citrus pulp (substance remaining after juice extraction) - Not exempt - Bureau
- Color added - Exempt - Law
- Cranberries, partially frozen as result of being placed in open boxes in storage under controlled temperatures to insure freshness pending transportation to canneries - Exempt - Bureau
- Cranberries, purposely quick-frozen, maintained in a frozen state during transportation - Not exempt - Bureau
- Dates, pitted, dried - Exempt - Law
- Dehydrated - Exempt - Law
- Dried, naturally or artificially - Exempt - Law
- Dried, not further processed, placed in sealed packages or receptacles - Exempt - Bureau
- Figs, dried, halved or quartered - Exempt - Law
- Figs, or dates, ground, in paste form, cooked, or with substantial amounts of other substances added - Not exempt - Bureau
- Fig paste, consisting of ground figs, either in their natural state or dried - Exempt - Bureau
- Frozen - Not exempt - Law-Ruling 110
- Frozen (quick-frozen) for the purpose of preservation during transportation—whether shipped under temperature control or not - Not exempt - Bureau
- Fruit baskets or gift packages consisting of fresh fruit with 5% or less of jelly in jars and candy - Exempt - Bureau
- Fumigated - Exempt - Law
- Graded - Exempt - Law
- Grape slurry comprised of grapes removed from stems and crushed - Exempt - Bureau
- Hulls of oranges after juice extractions - Not exempt - Law
- In Brine, to retain freshness - Exempt - Law
- Juice, orange or other citrus - Not exempt - Law
- Juice, fruit, plain or concentrated - Not exempt - Law



- Kernels - Exempt - Law
- Myrobalan (prune-like tropical fruit) dried, crushed and bagged - Exempt - Bureau
- Oiled apples - Exempt - Law
- Olives, processed for table use, in brine or not in brine, stuffed or not stuffed, in any type container - Not exempt - Bureau
- Orange and lemon peel, dried, prepared from hulls of fruit following juice extraction - Not exempt - Bureau
- Peaches, peeled, pitted, and put in cold storage in unsealed containers - Exempt - Law
- Pies, frozen - Not exempt - Law
- Plantains (considered to be bananas) - Not exempt - Case No. 15
- Preserved, such as jam - Not exempt - Law
- Purees, strawberry and other, frozen - Not exempt - Law
- Quick frozen - Not exempt - Law-Ruling 110
- Raisins, seeded or unseeded - Exempt - Law
- Raisins, very lightly coated with honey, cinnamon, or sugar - Exempt - Bureau
- Raisins, chocolate coated or glazed, thereby preserving and candying them - Not exempt - Bureau
- Sliced, frozen - Not exempt - Law-Ruling 110
- Strawberries, in syrup and unsealed containers in cold storage - Exempt - Law
- Strawberries, in unsealed containers with temperature controlled at 10° or lower - Not exempt - Bureau

- Artificially dried - Exempt - Law
- Barley, brewers' (residuary by-products of the malting process in which barley, steeped and germinated, is mixed with hops and other ingredients and allowed to ferment) - Not exempt - Bureau
- Barley, malted (processed only to the extent of soaking in warm water to hasten or induce germination, then drying, and removal of sprouts in some instances) - Exempt - Bureau
- Barley, pearled (husked and polished grains) - Exempt - Bureau
- Barley, rolled - Exempt - Law
- Barley, whole - Exempt - Law
- Brewer's grains, wet, by-product of brewing process - Not exempt - Bureau
- Corn cob pellets consisting of finely ground cobs with graphite added - Not exempt - Bureau
- Corn, cracked - Exempt - Law
- Corn, from which oil is extracted, ground and dried to comprise a product known as "brewers corn grits" - Not exempt - Bureau
- Corn screenings - Exempt - Bureau
- Corn shucks, used as "hot tamale shucks" - Exempt - Bureau
- Corn, shelled - Exempt - Law

Grain-Grinding

<ul style="list-style-type: none"><li>•Corn, whole - Exempt - Law</li><li>•Cracked wheat (bulgur or bulgar) processed by cooking the grains for purification and preservation, then drying, dehulling and grinding - Not exempt - Bureau</li><li>•Feeds, see separate heading: Feeds</li><li>Hulls and husks, see separate heading: Feeds</li><li>•Milo maize - Exempt - Law</li><li>•Oats, crimped or rolled in the same manner as rolled barley - Exempt - Bureau</li><li>•Oats, whole - Exempt - Law</li><li>•Oats, whole, crushed and ground, in bags - Exempt - Bureau</li><li>•Oil, extracted from grain - Not exempt - Law</li><li>•Popcorn, popped - Not exempt - Law</li><li>•Popcorn, shelled (unpopped) packaged with cooking fat or oil (one part oil to 2 1/2 parts popcorn) - Not exempt - Bureau</li><li>•Popcorn, shelled (unpopped), weighing ten or more ounces, accompanied by a separate package of seasoning consisting of salt, monosodium glutamate, butter flavor, cottonseed oil, and artificial color and flavor weighing approximately 3/4 ounce - Exempt - Bureau</li><li>•Popcorn, unpopped, shelled, in sealed or unsealed containers - Exempt - Law</li><li>•Puffed grains - wheat, rice, millet or corn - produced by application of steam inside air tight tubes, and heat from outside burners, although not fully cooked - Not exempt - Bureau</li></ul>	<ul style="list-style-type: none"><li>•Rice bran - Exempt - Law</li><li>•Rice, brewers - Exempt - Law</li><li>•Rice, clean - Exempt - Law</li><li>•Rice, ground, not sifted, bolted or graded - Exempt - Bureau</li><li>•Rice, hull ash (Burned hulls of threshed rice) - Not exempt - Bureau</li><li>•Rice, hulled ("brown rice") - Exempt - Bureau</li><li>•Rice, long grain, enriched, parboiled, subjected to enough steam pressure to harden kernel and reduce stickiness, but not boiled or precooked - Exempt - Bureau</li><li>•Rice, milled, fortified with vitamins - Exempt - Bureau</li><li>•Rice polish - Exempt - Law</li><li>•Rice, precooked - Not exempt - Law</li><li>•Rice, whole - Exempt - Law</li><li>•Rye, whole - Exempt - Law</li><li>•Sorghum grains, whole - Exempt - Law</li><li>•Wheat, bulgar, cleaned, cooked under steam pressure, dried, dehulled, ground, graded and bagged - Not exempt - Bureau</li><li>•Wheat germ - Not exempt - Law</li><li>•Wheat, new, crushed, uncooked - Exempt - Bureau</li><li>•Wheat, whole - Exempt - Law</li></ul>	<ul style="list-style-type: none"><li>•Grass seed - Exempt - Law</li><li>•Gravel - Not exempt - Law</li><li>•Greenery, see Forest products</li><li>•Grinding, without prior or subsequent manufacturing processes does not affect the exempt status of the commodity - Law</li></ul>
<ul style="list-style-type: none"><li>•Guano, bat (excrement of bats, dried, but not further processed) - Exempt - Bureau</li><li>•Gums, the exudation of trees and shrubs, such as arabic, ghatti and tragacanth, in natural state or dried, sifted, and ground, but not purified, neutralized or refined - Exempt - Bureau</li><li>•Hair<ul style="list-style-type: none"><li>•Hair, alpaca, camel, or goat, clipped from animal - Exempt - Law</li><li>•Hair, hog or other animal, product of slaughter of animal - Not exempt - Law</li><li>•Hair, rabbit or vicuna (plucked or clipped from live animal) - Exempt - Bureau</li></ul></li><li>•Hay<ul style="list-style-type: none"><li>•Hay and forage, dried naturally or artificially - Exempt - Law</li><li>•Hay, chopped - Exempt - Law</li><li>•Hay, dehydrated - Exempt - Law</li><li>•Hay, salt (from salt marshes) - Exempt - Law</li><li>•Hay, see also Feeds</li><li>•Hay, sweetened with 3% molasses by weight - Not exempt - Law</li></ul></li><li>•Hemp, see Fibers</li><li>•Herbs, see Spices</li><li>•Hides, green and salted - Note exempt - Law</li></ul>	<ul style="list-style-type: none"><li>•Honey<ul style="list-style-type: none"><li>•Honey, in the comb or strained - Exempt - Law</li><li>•Honey, Heat treated to retard granulation - Exempt - Law</li></ul></li><li>•Hops - Exempt - Law</li><li>•Horticultural commodities<ul style="list-style-type: none"><li>•Bulbs - Exempt - Law</li><li>•Flowers, growing or cut - Exempt - Law</li><li>•Leaves, natural or dried - Exempt - Law</li><li>•Nursery stock - Exempt - Law</li><li>•Plants, vegetables and flower - Exempt - Law</li><li>•Roots, rhubarb, asparagus, mint, etc. - Exempt - Law</li><li>•Star flowers - dried, spray painted - Exempt - Bureau</li><li>•Trees, growing, balled in earth - Exempt - Law</li><li>•Wreaths, holly or other natural material, with small amount of foundation or decorative material - Exempt - Law</li></ul></li><li>•Hulls and husks, see Feeds, Nuts</li><li>•Humus, of a nature similar to peat moss - Exempt - Law</li></ul>	



Ice-Livestock

**Ice for cooling subsequent shipments of exempt commodities** - Exempt - Law

**Ice cream and ice cream mix**, see Milk and cream

**Imported commodities** - Fact of importation does not affect status of otherwise exempt commodities, except that wool imported from any foreign country is not exempt - Law-Ruling 110

**Insecticides** - Not exempt - Law

**Juices**, see Fruits

**Jute fiber**, see Fibers

**Kapok**, see Fibers

**Kelp**, dried, ground - Exempt - Law

**Latex**, see Rubber

**Leaves**, see Forest products, Horticultural commodities, and Spices

**Legume inoculant** - Not exempt - Bureau

**Licorice paste and powder** (prepared from ground licorice root, and used in tobacco and confectionary trades and for medicinal purposes) - Not exempt - Bureau

**Licorice roots**, spent (by-product or residue remaining after open-vat leaching process used to extract licorice) - Not exempt - Bureau

Livestock

• Exhibit animals such as those of 4-H club members, which though shown for a few days, are chiefly valuable for slaughter - Exempt - Law

• Laboratory animals, not domesticated, such as rats, mice, guinea pigs - Not exempt - Bureau

• Medical use animals, such as ordinary healthy swine for serum manufacture - Exempt - Law

• Monkeys - Not exempt - Law

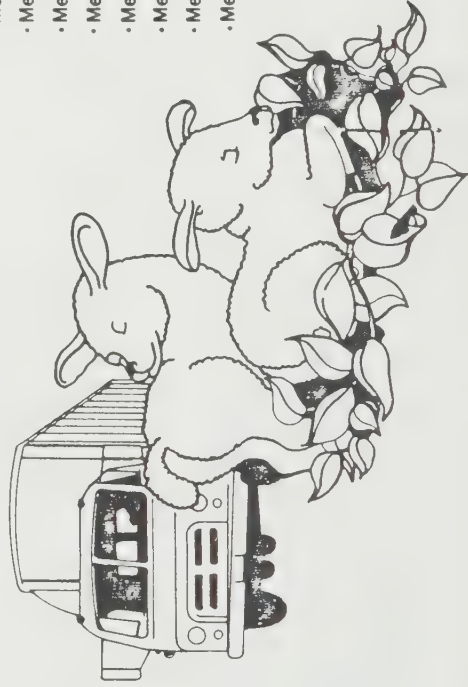
• Ordinary, i.e. all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, and other special uses - Exempt - Law

• Race horses - Not exempt - Law

• Registered or purebred cattle for ordinary farm or ranch uses, not chiefly valuable for breeding, race, show, or other special purposes - Exempt - Law

• Riding horses, used for personal pleasure riding - Exempt - Bureau

• Rodeo animals (bucking horses, cow ponies, parade horses, pick-up horses, Brahma bulls, steers, calves, buffalo) - Not Exempt - Bureau



Livestock-Milk and Cream

**Meat and meat products**

- Beef dinners, frozen - Not exempt - Bureau
- Fresh, frozen or canned - Not exempt - Law
- Meat pies, frozen - Not exempt - Bureau
- Meat of seals, seal lions and walrus - Not exempt - Bureau
- Scrap bones and meat, refuse from packing houses - Not exempt - Bureau

**Milk and Cream**

- Anhydrous milk fat made by a continuous separation process directly from milk or cream in the same manner as nonfat dried milk solids - Exempt - Bureau
- Butterfat, isex, Gold Label (trade name) consisting of over 50% sugar and 2% water and 44% butterfat - Not exempt - Bureau
- Buttermilk - Exempt - Law
- Buttermix/condensed cream, consisting of 45% butter fat 30% sugar and 25% skimmed milk solids - Not exempt - Bureau
- Casein, produced commercially through specialized processes - Not exempt - Case No. 1

- Cheese, see that main heading
- Concentrate, pasteurized and homogenized, with 2/3 of the water removed - Exempt - Bureau
- Concentrate, consisting of fresh whole milk from which a portion of the water is removed to which no substantial amount of nonexempt substance is added - Exempt - Bureau

- Show horses - Not exempt - Law
- Zoo animals - Not exempt - Law

**Limestone**, agricultural - Not exempt - Law

**Linseed meal**, see Meal

**Lumber**, rough sawed or planned - Not exempt - Law

**Manure**

- Manure, in natural state - Exempt - Law
- Manure, dried or dehydrated, bagged - Exempt - Law
- Manure to which sand is added as conditioning ingredient, equivalent to 3% of the total mixture - Exempt - Bureau
- Manure, paunch (cud of animal's rumen) product of slaughter - Not exempt - Bureau
- Manure, fermented, with additives such as yeast and molds, producing a rich liquor which in water solution is used for soil enrichment - Not exempt - Bureau

**Maple sap** - Exempt - Law

**Maple syrup** - Not exempt - Law

**Meal**

- Meal, alfalfa - Not exempt - Law
- Meal, copra - Not exempt - Law
- Meal, cottonseed - Not exempt - Law
- Meal, fish - Not exempt - Law
- Meal, flaxseed - Not exempt - Law
- Meal, linseed - Not exempt - Law
- Meal, peanut - Not exempt - Law
- Meal, soybean - Not exempt - Law

Milk and Cream

- Concentrate (mixture of fresh cream with skim milk from which a portion of water is removed) - Exempt - Bureau
- Condensed - Not exempt - Law
- "Culturemate": non-fat dry milk powder, 10% dry phosphate salts, dry process extract, small amounts of dextrose and whey - Not exempt - Case No. 29
- Dry milk solids (essentially the same as powdered milk) - Exempt - Case No. 1
- Evaporated milk, in sealed cans - Not exempt - Bureau
- Frozen - Exempt - Law
- Homogenized - Exempt - Law
- Ice cream mix (blend of milk, dried skim milk and sugar) - Not exempt - Bureau
- Lactose: milk sugar, traces of protein and ash, made by condensing sweet cheese whey, crystalizing by cooking, then spinning, drying and bagging - Exempt - Case No. 29
- Milk "replacer" containing 10% animal fat - Not exempt - Bureau
- Milk "replacer" (blend of 98% ingredients themselves "exempt" commodities and 2% dietary supplements and flavoring ingredients, not otherwise processed) - Exempt - Bureau
- Milk "replacer" (Calf Pab), containing at least 20 nonexempt ingredients (no percentages shown) - Not exempt - Bureau
- Milk shake mix, composed of powdered milk with substantial amounts of sweetening and flavoring added - Not exempt - Bureau
- Pasteurized - Exempt - Law
- Powdered - Exempt - Law
- Raw - Exempt - Law
- Raw milk with coloring added to indicate it has been found unfit for human consumption - Exempt - Bureau
- Skim - Exempt - Law
- Skim, dried - Exempt - Bureau
- Skim, with two-thirds of water removed, in bulk or unsealed containers - Exempt - Law
- Standardized - Exempt - Law
- Sterilized in hermetically sealed cans - Not exempt - Law
- Vitamin "A" - Exempt - Law
- Whey, see that main heading
- Whipped cream, frozen, containing only exempt dairy products, which is mechanically processed into that form - Exempt - Bureau
- Whole milk with moisture content removed and nothing added - Exempt - Bureau
- yogurt, plain or flavored - Not exempt - Bureau



Milk-Nuts

- Milk**, see Grains
- Mohair**, raw, cleaned, or scoured - Exempt - Law
- Molasses** - Not exempt - Law
- Moss**, see Forest products
- Mushrooms**, fresh - Exempt - Law
- Nursery stock**, see Horticultural commodities
- Nutria carcasses**, ground, for use as mink feed - Not exempt - Bureau
- Nutria** (or coypu), skinned, whole or chopped - Not exempt - Bureau
- Nutria and rat carcasses**, whole, frozen or unfrozen - Not exempt- Bureau
- Nuts**
- Blanched (placed in water hot enough to soften the skins and facilitate removal of kernel, but not sufficient to kill the enzymes) - Exempt - Bureau
  - Cashews, roasted or cooked - Not exempt - Bureau
  - Cashews, scorched (not roasted or cooked, but darkened in color unintentionally by overheating during shelling process) - Exempt - Bureau
  - Coconut, dried, shredded, flaked, or prepared by thread mill or devil mill to produce thread-like particles or granules, not further processed - Exempt - Bureau
- Coconut meal, see separate heading: Copra meal
- Macadamia nuts - Exempt - Bureau
- Peanut meal - Not exempt - Law
- Peanut shells, ground - Exempt - Law
- Peanuts, roasted and salted in the shell - Not exempt - Bureau
- Pistachio, shells colored with food coloring but not otherwise processed - Exempt - Bureau
- Raw, shelled or unshelled - Exempt - Law
- Roasted or boiled - Not exempt - Law
- Shelled, raw - Exempt - Law
- Shelled, salted (not roasted or otherwise similarly processed) - Exempt - Bureau
- Shelled, sprayed or washed with preservative but not candied or flavored - Exempt - Bureau
- Shells - Exempt - Law
- Shells, ground peanut - Exempt - Law
- Shells, peanut, pelleted, comprised of hulls or shells ground and formed into pellets by application of pressure with steam as binder (similar to production of alfalfa pellets) - Not exempt - Bureau
- Shells, pecan, ground - Exempt - Case No. 17
- Shells, pecan, mixed with chemicals equivalent to 10% of the total mixture - Not Exempt - Bureau
- Unshelled, raw - Exempt - Law

**Oats-Poultry**

**Oats**, see Grains

**Offal**, consisting of blood, intestines, viscera, etc., by-product of the slaughtering of animals - Not exempt - Bureau

**Oil**

- Oil mint - Not exempt - Law
- Oil, extracted from vegetables, grain, seed, fish, or other commodity - Not exempt - Law

**Olivea**, see Fruits and Berries

**Packaged commodities** - Packaging exempt commodities does not affect their exempt status - Law

**Peanuts**, see Nuts

**Peat moss**, see Forest products

**Pelletized feeds**, see Feeds

**Pelts** - Not exempt - Law

**Plea**, frozen - Not exempt - Law

**Pigeons**, racing, see Birds

**Plants**, vegetable or flower, see Horticultural commodities

**Poles**, See Forest products

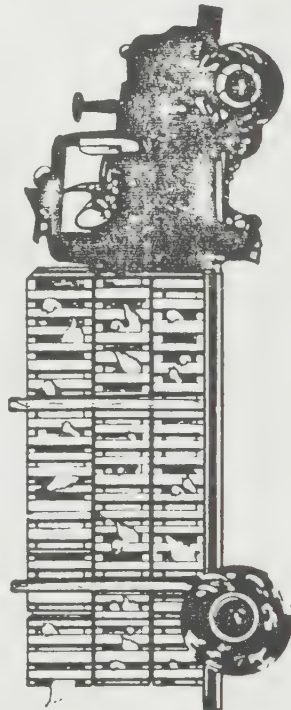
**Popcorn**, see Grains

**Poultry-Seafoods**

**Potash** - Not exempt - Bureau

**Poultry and Poultry Products**

- Additives, such as injected butter, gravy, seasoning, etc., sold in or along with uncooked poultry, do not void the exempt if not in excess of 5% by weight - Bureau
- Blood of poultry and rabbits from which corpuscles have been removed by centrifugal force (processing by a machine similar to a cream separator) - Exempt - Bureau
- Broth, dehydrated by spray-drying into a powder - Not exempt - Case No. 25
- Carcasses, raw, in marble-size chunks - Exempt Bureau
- Cut up, raw - Exempt - Bureau
- Cut-up, precooked or cooked; same, breaded and/or battered; same, marinated, breaded and/or battered; all frozen or refrigerated - Exempt - Case No. 26
- Deboned, cooked or uncooked, fresh or frozen, in rolls or diced - Exempt Bureau
- Dehydrated, chunked, process includes boiling, grinding, and drying - Not exempt - Case No. 25
- Dinners, cooked and frozen - Exempt - Bureau; see also separate heading: Dinners
- Dressed, fresh or frozen - Exempt - Law



- Fat, as removed from poultry, not cooked - Exempt - Bureau
- Fat, skimmed from broth, plain or reduced to powder by spray-drying - Not exempt - Case No. 25

• Feathers - Exempt - Law

• Frozen - Exempt - Law

• Live - Exempt - Law

• Offal, including blood (natural by-products of the killing and processing poultry for market) - Exempt - Case No. 27

• Picked - Exempt - Law

• Pies, cooked, frozen or unfrozen - Not exempt - Bureau

• Powdered, process includes boiling, fine grinding, and spray-drying - Not exempt - Case No. 25

• Rolled in batter but uncooked - Exempt - Bureau

• Rolls, containing sectioned and deboned poultry, cooked - Exempt - Bureau

• Sticks, cooked - Exempt - Bureau

• Stuffed and frozen - Exempt - Law

• Stuffing, in plastic bags, packed with but not in bird - Exempt - Bureau

**Pulp, beet** - Not exempt - Law

**Pup**, sugarcane - Not exempt - Law

**Purees**, see Fruits

**Rabbits**

- Rabbits, dressed - Exempt - Law
- Rabbits, wild, skinned - Not exempt - Bureau

**Raisins**, See Fruits

**Ramie Fiber**, see Fibers

**Residue**, (foots or sediments) remaining after removal of oil from various commodities - Not exempt - Bureau

**Resin**, see Forest products

**Rice**, see Grains

**Rock** - Not exempt - Law

**Roots**, see Forest products, Horticultural commodities, Spices and herbs

**Rubber**

- Rubber, crude, in bales - Not exempt - Law
- Rubber, latex, natural, liquid, from which water has been extracted and to which ammonia has been added - Not exempt - Law

**Rye**, see Grains

**Sand** - Not exempt - Law

**Sap**, see Forest products

**Sawdust**, see Forest Products

**Sea Creatures**, see Fish

**Seasoning or salt, added to a commodity** within the exemption in insignificant amounts, not considered to affect exempt status of commodity - Bureau

**Seaweed**, dried, ground - Exempt - Law



## Seeds-Studge

### Seeds

- Anise, not subject to a manufacturing process - Exempt - Bureau
- Bird seed, see separate heading: Feeds
- Cotton, see separate heading: Cottonseed
- Dawned - Exempt - Law
- Flax, see separate heading: Flaxseed
- Grass seed - Exempt - Bureau
- Grass seed, packaged in individual boxes and bags - Exempt - Bureau
- Hybrid seed corn - Exempt - Bureau
- Inoculated - Exempt - Law
- Meal made from seeds, see Meal
- Natural - Exempt - Law
- Oil extracted from seeds - Not exempt - Law
- Scarified - Exempt - Law
- Packets or boxes of seeds in display racks - Exempt - law.
- Scarified - Exempt - law.
- Screened or sized - Exempt - Law
- Seed kits, flower or vegetable, consisting of seeds, soil substitutes, and plant food, in growing tray (punch and grow kits) - Not Exempt - Bureau
- Sesame seeds in hulls, bagged - Exempt - Bureau

- Sesame seeds, cleaned and dehulled by mechanical process - Exempt - Bureau
- Siftings and screenings consisting of residue from sieving of seeds (not further processed) - Exempt - Bureau
- Soybean seeds, in bags on which are attached a small container of Inoculant - Exempt - Bureau
- Spice, see Spices
- Sprayed for disease control - Exempt - Law
- Sunflower seed hulls, lubricated by spraying with hot water to increase density, formed into loose, crumbling pellets - Exempt - Bureau
- Tamarind, ground, comprised of seeds removed from pods without boiling cooking, or the like, and processed only by cleaning and grinding - Exempt - Bureau
- Used as seasonings, not subjected to a manufacturing process - Exempt Bureau
- **Shells**, see Cocoa bean, Eggs, Fish, Nuts
- **Shingle bolts**, see Forest Products
- **Skins**
  - Skins , animal - Not exempt - Law
  - Skins, seal (sea mammal hides) - Not exempt - Bureau

**Sliced**, see commodity name: Fruits, Vegetables, etc.

**Sludge**, dried sewage - Not exempt - Bureau

## Soil-Textile waste

### Soil

- Soil, potting - Not exempt - Law
- Soil, potting or African Violet Mix consisting of 90% peat, 8% sand and 2% vermiculite - Not exempt - Bureau

Soil, top - Not exempt - Law

**Sorghum fodder** - Exempt - Law

**Sorghum grains** - Exempt - Law

**Soup**, frozen - Not exempt - Law

**Spanish moss**, gathered from trees - Exempt - Bureau

### Spices and Herbs

- Angelica root - Exempt - Bureau
- Chicory root, natural or dried - Exempt - Bureau
- Chili powder, consisting of dried, ground chili pepper pods - Exempt - Bureau
- Chili powder (mixture of ground peppers, spices and herbs, and a small amount of salt) - Exempt - Bureau
- Cumin seed - Exempt - Bureau
- Deer, (or deer's) tongue leaves, natural, dried, or processed in a manner similar to that undergone by redried, tobacco leaf - Exempt - Bureau



• Ground, but not further processed - Exempt - Bureau

• Paprika, ground - Exempt - Case No. 20

• Pepper, ground, not further processed - Exempt - Bureau

• Raw, unground spices-Exempt-Case No. 20

• Reconditioned spices, ground (screened for removal of impurities but not further processed) - Exempt - Bureau

• Seeds, see also that main heading

• Sweet basil leaves, dried and separated from stems - Exempt - Bureau

• Unground, whether seeds, berries, leaves, bark or roots - Exempt - Law

**Stone**, natural, marble or granite - Not exempt - Bureau

**Stover** - Exempt - Law

**Straw** Exempt - Law

**Sugar** - Not exempt - Law

**Sugar beets** - Exempt - Law

**Sugar cane** - Exempt - Law

**Sugar cane pulp** - Not exempt - Law

**Sugar**, raw - Not exempt - Law

### Syrup

Syrup, cane - not exempt - law

Syrup, maple - not exempt - law

**Tankage**, consisting of offal from slaughtered animals - Not exempt - Bureau

**Tee** - Not exempt - Law-Ruling 110

**Telephone poles**, see Forest products

**Textile waste**, see Cotton waste

## Tobacco-Vegetables

### Tobacco

- Binder tobacco, composed of adhesive materials added to pulverized tobacco, the resultant mixture formed into flat sheets (similar to homogenized tobacco) - Not exempt - Bureau
- Chopped leaf - Exempt - Law
- Cigars and cigarettes - Not exempt - Law
- Fragments, siftings and dust resulting from processes which produce tobacco items within the exemption (i.e. chopped tobacco leaf, redried leaf, etc.); also that which becomes unusable during preliminary handling prior to the manufacture of non-exempt tobacco items - Exempt - Bureau
- Homogenized - Not exempt - Law
- Leaf - Exempt - Law
- Redried leaf - Exempt - Law
- Smoking - Not exempt - Law
- Stem meal - Not exempt - Bureau
- Stemmed leaf - Exempt - Law
- Stems - Exempt - Law
- Tobacco made of ground-up scraps, considered a form of homogenized tobacco - Not exempt - Bureau

### Topsoil - Not exempt - Law

### Trees, see Forest products

### Turtles, see Fish

### Vegetables

- Bagged - Exempt - Law
- Beans, dried artificially and packed in small container- Exempt - Law
- Cabbage rolls (heads of cabbage pickled in water and salt after which the leaves are cut off and stuffed with a tomato and whole pepper, in jars with juice of pickled cabbage) - Not exempt - Case No. 18

- Candied sweet potatoes, frozen - Not exempt - Law
- Canned - Not exempt - Law
- Cauliflower, cured in salt brine, shipped in open unsealed containers - Exempt - Case No. 21
- Cooked - Not exempt - Law
- Cooked in water or steam for a period longer than that necessary for the inactivation of the enzymes, or by immersion in oil or fat - Not exempt - Case No. 22
- Cucumbers and other vegetables processed into pickles by the ordinary means - Not exempt - Bureau
- Cucumbers and tomatoes, barrel-cured into Kosher pickles (fresh cucumbers or tomatoes kept in barrel overnight with water garlic, salt, spices and seasonings, then placed in jars and kept under refrigeration) - Not exempt - Case No. 18
- Cucumber delight (sliced cucumbers with onions, peppers, sugar and salt, in jars or barrels with juices) - Not exempt - Case No. 18
- Cucumbers, salt cured - Exempt - Law
- Cut up, fresh, in cellophane bags - Exempt - Law
- Cured - Exempt - Law
- Dehydrated - Exempt - Law
- Dried, naturally or artificially - Exempt - Law
- French fried onion rings - Not exempt - Case No. 22
- French fried potatoes - Not exempt - Law
- Frozen - Not exempt - Law-Ruling 110

## Vegetables

- Potato by-product, consisting of mashed potatoes recovered from drying machines or gathered as spillage from floor during latter stages of processing of instant mashed potatoes - Not exempt - Bureau
- Potato flakes (cooked and dehydrated flakes of potato) - Not exempt - Bureau
- Potatoes, candied (seet), whipped, rissole, or puff - Not exempt - Case No. 22
- Potatoes, peeled, sliced, blanched or dipped in preservative solution, but not cooked or otherwise processed - Exempt - Bureau
- Potatoes, peeled and scalded or blanched (not subjected to a greater degree of heat than that necessary to inactivate enzymes) - Exempt - Bureau
- Potatoes, powdered, prepared from potatoes, washed, cooked, peeled, with moisture removed - Not exempt - Bureau
- Powdered, onion and garlic - Exempt - Law
- Precooked, pouch-packed, with or without sauce - Not exempt - Case No. 22
- Products, the ingredients of which include vegetable matter combined with other commodities - Not exempt - Case No. 22
- Quick frozen - Not exempt - Law-Ruling 110
- Romanian kraut (shredded cabbage with juice consisting of water, sugar, celery seed and fresh peppers) - Not exempt - Case No. 18
- Garlic paste, made from fresh crushed garlic cloves heated only enough to deactivate the enzymes, small percentage of preservative added - Exempt - Bureau
- Garlic powder - Exempt - Law
- Grated - Exempt - Law
- Mushrooms (considered vegetables for purposes of Section 203(b)(6), frozen - Not exempt - Bureau; Freeze dried (frozen, then thawed, then dehydrated) - Exempt - Bureau
- Oil, extracted from vegetables - Not exempt - Law
- Onion chips and flakes, dried - Exempt - Law
- Onion powder - Exempt - Law
- Onion powder, made from onions sauteed in oil and then powdered or dehydrated - Not exempt - Bureau
- Onion rings, frozen, shipped with frozen fish dinners of which they are intended to be a part - Exempt - Bureau
- Onion, cured in salt brine, shipped in open unsealed containers - Exempt - Case No. 21
- Peas, split - Exempt - Law
- Peeled, uncooked - Exempt - Law
- Pepper delight (peppers with vinegar, salt and sugar) - Not exempt - Case No. 18
- Pepper hulls, cured in salt brine, shipped in open unsealed containers - Exempt - Case No. 21
- Peppers and kraut, stuffed (whole peppers filled with sauerkraut in jars with natural sauerkraut juice) - Not exempt - Case No. 18
- Pickled - Not exempt - Case No. 21
- Potato by-product made from raw rejects peeled and washed in caustic solution and hot water, dewatered, dried and ground - Exempt - Bureau.



Vegetables-wool

- Sauerkraut, pickled by keeping shredded cabbage in a barrel for 36-40 hours, thence in cold storage for about 36 hours, then packed in jars with water, sugar, and benzoate of soda (requires refrigerator - Not exempt - Case No. 18
- Sauerkraut, uncooked, pickled, in sealed plastic containers or sealed wooden barrels - Not exempt - Bureau
- Shelled - Exempt - Law
- Soup, frozen - Not exempt - Law
- Soybean meal - Not exempt - Law
- Tomato juice - Not exempt - Bureau
- Tomato paste, consisting of tomatoes heated to 190° - Not exempt - Bureau
- Tomato pomace (residue remaining after juice extraction) - Not exempt - Bureau
- Tomato powder, dehydrated without cooking, (not the residue left after juice extraction) - Exempt - Bureau
- Tomatoes, in salt brine, to preserve freshness while in transit - Exempt - Case No. 21
- Washed, fresh, in cellophane bags - Exempt - Law

**Water, and distilled water** - Not exempt - Bureau

Wax

- Wax, beeswax, crude, in cakes and slabs - Exempt - Law
- Wax, carnauba, as imported in slabs and chunks - Not exempt - Law

- Wax, crude candelilla, boiled in water to which some acid is added, purpose of which is not to change the wax in any way but to remove the wax scales from the leaves of the plant on which it forms, and the resulting residue boiled again to remove excess moisture and debris - Exempt - Bureau

**Whale meat**, see Fish

Wheat

- Wheat, see Grains
- Wheat products, see Feeds, Flour

Whey

- Whey, powdered or dried - Exempt - Case No. 23
- Whey lactose - Exempt - Case No. 29
- Whey powder - produced by separating liquid whey, removing butter fat, drying, steam rolling, cutting, bagging for further drying, grinding and packaging - Exempt - Bureau

**Wood**, see Forest products

Wool

- Cleaned and scoured after being imported - Not exempt - Bureau
- Grease, as obtained from cleaning or scouring process - Exempt - Law

Wool-Zoo animals

**Wreaths**, see Forest products

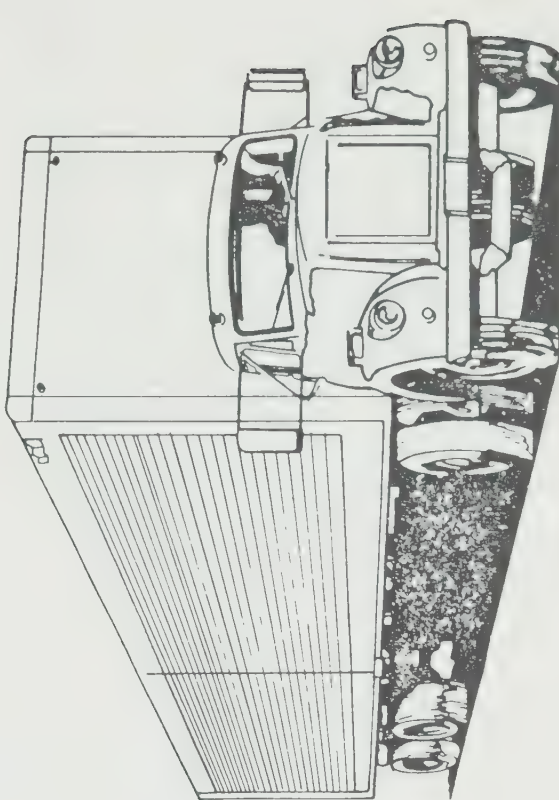
**Worms**, blood (cultivated in a "farming" type operation in marshy soil) - Exempt - Bureau

**Worms**, sea, live (gathered from mud flats, for use as bait) - Exempt - Bureau

**Yeast**, brewers' residual, or "bottom yeast" (substance which settles to bottom of vat during fermentation of beer or liquors) - Not Exempt - Bureau

**Zoo animals** - Not exempt - Law

- Imported from any foreign country - Not exempt - Law-Ruling 110
- Mixture of blend of imported and domestic wool - Not Exempt - Bureau
- Pulled wool (wool removed from hides after slaughter) - Not exempt - Bureau
- Raw, cleaned or scoured, but not including wool imported from any foreign country - Exempt - Law-Ruling 110
- Scoured, origin unknown - Not exempt - Bureau
- Tags of domestic wool and mohair (matted and ragged locks as shorn) - Exempt - Bureau
- Waste (carded, spun, woven, or knitted) - Not exempt - Law-Ruling 110
- Yarn - Not exempt - Law



## Case List

### of Administrative Ruling No. 119

**Case No. 1** - Cossitt Motor Express Inc. - Powdered Milk and Casein, 96 M.C.C. 557

**2** - Sturgeon and Meeker, Extension - Wheat Bran, 84 M.C.C. 655

**3** - Atcheson, T. & S.F. Ry. Co., Petition - 103 M.C.C. 364

**4** - Refrigerated Dispatch Ltd., Inc. - Common Carrier Application, 81 M.C.C. 429

**5** - Phillips - Common Carrier Application, 82 M.C.C. 528

**6** - Fred C. Burns, Extension - Alexandria, Va., MC-111875 Sub 8, decided Oct. 27, 1960 (not printed)

**7** - Holt, Extension - Pilings, 77 M.C.C. 141

**8** - Poole, Extension - Calcium Chloride, 83 M.C.C. 522

**9** - Edgar H. Allen & Son, Inc., Extension - Old Bridge, N.J., 98 M.C.C. 131

**10** - Chancey Bros. Truck Line, Extension - Lumber, 73 M.C.C. 85

**11** - Determination of Commodity Status - Petition, 113 M.C.C. 6

**12** - Everett - Investigation of Operation, 88 M.C.C. 784

**13** - Miller's Motor Freight, Inc., MC-41915 Sub 26, decided June 20, 1962 (not printed)

**14** - Maxwell Co., Extension - Cherries in Brine, 100 M.C.C. 10

**15** - Holland Highway Express, Inc., Extension - Plantains, 86 M.C.C. 93

**16** - Producers Transport, Inc., Extension - Soya Bean Husks, 103 M.C.C. 691

**17** - Kinner - Common Carrier Application, 99 M.C.C. 748

**18** - Seashore Food Products, Inc. - Declaratory Order, 95 M.C.C. 546

**19** - Petition for Declaratory Order - Wild Birdseed, 110 M.C.C. 406

**Case No. 20** - Acme Carriers, Inc., Common Carrier Application, 74 M.C.C. 797

**21** - Hadder Trucking Co., Inc., Extension - Commodities in Brine, 79 M.C.C. 499

**22** - Frozen Cooked Vegetables - Status, 81 M.C.C. 649

**23** - Petition of Ida-Cal Freight Lines, Inc., MC-C-3557, Order of August 29, 1962 (not printed)

**24** - Hughes - "Grandfather" Application, 89 M.C.C. 471, 484-486

**25** - Henningsen Foods, Inc., Petition, 106 M.C.C. 286

**26** - Pillsbury Co. et al., v. U.S. et al., 409 US 808 reversing 113 M.C.C. 225

**27** - Labertew Trucking, Inc., Extension - Poultry Offal, 96 M.C.C. 370

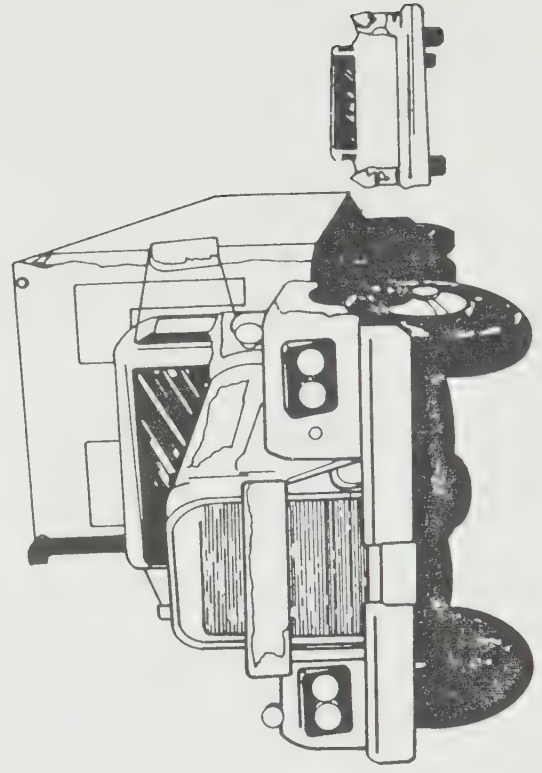
**28** - Grant's Trucking Co., Petition-Oyster Shells, 118 M.C.C. 892

**29** - I.C.C. v. Schaetzel, 339 F. Supp. 1345 (1972)

**30** - Forest Transport Corp., MC 138702 sub 2 decided April 8, 1974

**31** - Anderson Peat Co., Petition, 119 M.C.C. 494

**32** - Arkansas Rice Growers Coop. Assn., Petition, MC-C-7949 - Initial decision served January 11, 1974; final report pending



Field Offices

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<b>Ala.</b>	<b>Phoenix</b> 85025 3427 Federal Bldg. 230 North First Ave	<b>Ind.</b>	602-261-3834	<b>Ind.</b>	Fort Wayne 46802 345 West Wayne Street Room 204	<b>Ind.</b>	219-422-8131	<b>Minn.</b>	612-725-2328	<b>Albany</b> 12201 518 New Federal Bldg. Maiden Lane & Broadway	518-472-2273
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<b>Calif.</b>	<b>Los Angeles</b> 90012 1321 Federal Building 300 North Los Angeles Street	<b>Iowa</b>	213-488-4008	<b>Iowa</b>	Des Moines 50309 518 Federal Building 210 Walnut Street	<b>Iowa</b>	515-284-4416	<b>Mia.</b>	816-374-5561	<b>New York</b> 10007 26 Federal Plaza Room 1807	212-264-1072
<b>Calif.</b>	<b>San Francisco</b> 94102 13001 Federal Bldg 450 Golden Gate Ave P.O. Box 36004	<b>Iowa</b>	415-556-5515	<b>Kana.</b>	Topeka 66603 234 Federal Bldg.	<b>Kana.</b>	913-234-8861 Ext. 401	<b>Mont.</b>	314-425-4103	<b>Syracuse</b> 13202 104 O'Donnell Bldg 301 Erie Blvd., West	315-473-3440
<b>Colo.</b>	<b>Denver</b> 80202 Room 492, U.S. Customs House 721 19th Street	<b>Kana.</b>	308-837-3162	<b>Kana.</b>	Wichita 67202 501 Petroleum Bldg. 221 South Broadway	<b>Kana.</b>	316-287-6311 Ext. 608	<b>Mont.</b>	408-245-8711 Ext. 6261 or 6350	<b>Charlotte</b> 28205 Room CC-516 Mart Office Building 800 Blar Creek Road	704-372-0711 Ext. 451 or Ext. 452
<b>Conn.</b>	<b>Hartford</b> 06101 324 U.S. Post Office 135 High Street	<b>Ky.</b>	203-244-2560	<b>Ky.</b>	Lexington 40505 216 Bakhaus Building 1500 West Main Street	<b>Ky.</b>	606-252-2312 2511 or 2770	<b>Nebr.</b>	402-471-5088	<b>Raleigh</b> 27611 624 Federal Bldg 310 New Bern Ave. P.O. Box 26896	919-755-4650
<b>DC</b>	<b>Washington</b> 20423 ICC Bldg. Bureau of Operations 317 Labor Bldg. 12th & Const. N.W	<b>Ky.</b>	202-343-4671 or 4672	<b>Louisville</b> 40202 426 U.S. Post Office 601 West Broadway	<b>Louisville</b> 40202 426 U.S. Post Office 601 West Broadway	<b>Louisville</b> 40202 426 U.S. Post Office 601 West Broadway	502-582-5167	<b>N. Dak.</b>	701-237-5771 Ext. 5285	<b>Fargo</b> 58102 P.O. Box 2340, Federal Bldg. & U.S. Post Office 657 Second Ave. North	
<b>Fla.</b>	<b>Jacksonville</b> 32202 288 Federal Bldg Bldg. Box 35008 400 West Bay Street	<b>La.</b>	904-791-2551 or 904-791-2552	<b>La.</b>	New Orleans 70113 1-9038 Federal Bldg. & U.S. Post Office 701 Loyola Avenue	<b>La.</b>	504-589-6101 or 504-589-6102	<b>Ohio</b>	702-582-2085	<b>Cincinnati</b> 45202 5514-B Federal Bldg 550 Main Street	513-684-2875 or 513-684-2876
<b>Fla.</b>	<b>Miami</b> 33166 Monterey Building, Suite 101 8410 N. W. 53rd Terrace	<b>La.</b>	305-350-5551	<b>Maine</b>	Portland 04112 305 U.S. Post Office & Courthouse 76 Pearl Street	<b>Maine</b>	207-775-3131	<b>Nebr.</b>	504-589-6101 or 504-589-6102	<b>Cleveland</b> 44199 181 Federal Bldg 1240 East Ninth Street	216-522-4000 or 216-522-4001
		<b>Md.</b>	301-942-2560	<b>Md.</b>	Baltimore 21201 814-B Federal Bldg Charles Center 31 Hopkins Plaza	<b>Md.</b>	301-942-2560	<b>Nebr.</b>	614-488-5620	<b>Columbus</b> 43215 220 Federal Bldg. and U.S. Courthouse 85 Marconi Blvd.	614-488-5620
		<b>Md.</b>	301-942-2560	<b>Md.</b>	Baltimore 21201 814-B Federal Bldg Charles Center 31 Hopkins Plaza	<b>Md.</b>	301-942-2560	<b>Nebr.</b>	419-259-7486 or 419-259-7487	<b>Toledo</b> 43604 313 Federal Bldg 234 Summit Street	419-259-7486 or 419-259-7487

<b>Okla.</b>	Oklahoma City 73102 240 Old Post Office and Courthouse 215 Northwest Third St	<b>405-231-4406</b>	<b>Tex.</b>	Fort Worth 76102 9A27 Fritz Garland Lanham Federal Bldg 819 Taylor Street	<b>817-334-2837</b>
<b>Oreg.</b>	Portland 97204 114 Pioneer Courthouse 555 S.W. Yamhill Street	<b>503-221-3102</b>		Houston 77002 8610 Federal Bldg & U.S. Courthouse 515 Rusk Ave P.O. Box 61212 Houston, Tex 77061	<b>713-226-4241</b>
<b>Pa.</b>	Harrisburg 17108 278 Federal Bldg 228 Walnut Street P.O. Box 869	<b>717-782-4437</b>	mailing address		
	Philadelphia 19106 William J. Green, Jr., Federal Bldg 600 Arch Street, Room 3238	<b>215-597-4449</b> or <b>215-597-4453</b>		San Antonio 78206 Room B-400 Federal Building 727 E. Durango	<b>512-225-5511</b> Ext 4318 or 4319
	Pittsburgh 15222 2111 Federal Building 1000 Liberty Avenue	<b>412-644-2929</b>	<b>Utah</b>	Salt Lake City 84138 5301 Federal Bldg 125 South State Street	<b>801-524-5680</b>
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<b>RI</b>	Providence 02903 187 Westminster street Room 401	<b>401-526-4306</b>	<b>Va.</b>	Richmond 23240 10-502 Federal Bldg 400 North Eighth Street	<b>804-782-2541</b>
<b>SC</b>	Columbia 29201 RM 302, 1400 Building 1400 Pickens Street	<b>803-785-5586</b>	<b>Wash.</b>	Roanoke 24011 Mailing Address: P.O. Box 210 722 Richard H. Poff Federal Bldg 210 Franklin Road, S.W.	<b>703-982-8355</b>
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<b>Tex.</b>	Amarillo 79101 1012 Herring Plaza 317 East Third St	<b>806-376-2136</b>	<b>Wia.</b>	Madison 53703 139 West Wilson Street Room 202	<b>608-252-5218</b>
	Dallas 75242 Room 13C12 1100 Commerce St	<b>214-749-3661</b>		Milwaukee 53203 135 West Wells Street Room 807	<b>414-224-3183</b>
			<b>Wyo.</b>	Casper 82601 1006 Federal Bldg & Post Office 100 East B. Street	<b>307-265-5550</b> Ext. 3243

..This is the list of the Commission's field offices and telephone numbers as of April, 1976. Should you have any difficulties contacting an office, please consult your local telephone directory



"ARRANGEMENT DE RECIPROCITE EN MATIERE D'IMMATRICULATION DE VEHICULES AUTOMOBILES ENTRE LA PROVINCE DE QUEBEC ET LA PROVINCE D'ONTARIO"

"AGREEMENT RESPECTING RECIPROCITY IN THE MATTER OF REGISTRATION OF CERTAIN MOTOR VEHICLES BETWEEN THE PROVINCE OF ONTARIO AND THE PROVINCE OF QUEBEC"

Dans le présent arrangement, les expressions suivantes signifient:

In this agreement:

"transport privé": l'utilisation d'un véhicule désigné comme "véhicule de livraison" au Québec et comme "commercial vehicle" en Ontario pour le transport de biens qui sont la propriété du propriétaire de ce véhicule;

"private carriage" means the operation of a vehicle designated as "delivery vehicle" in Quebec and as "commercial vehicle" in Ontario for the transportation of goods which are the property of the owner of this vehicle;

"place d'affaires": dans le cas d'une personne effectuant un transport privé, l'endroit où elle exploite une entreprise qui n'est pas une entreprise de transport;

"place of business" means, in the case of a person engaged in private transportation, the place where this person operates an enterprise which is not an enterprise of transportation;

"transporteur public": une entreprise de transport routier qui détient un permis délivré en vertu de la Loi sur le transport par véhicule à moteur, Statuts révisés du Canada, 1970, chapitre M-14, pour la province d'Ontario et la province de Québec et comprend le transport de biens visés au sous-paragraphe e) du paragraphe 3 ci-dessous.

"public carrier" means an enterprise of road transportation which holds a permit issued pursuant to the Motor Vehicle Transport Act, Revised Statutes of Canada, 1970, ch. M-14, for the Province of Ontario and the Province of Quebec and includes the transportation of goods designated in sub-paragraph e) of paragraph 3 hereafter.

Cet arrangement a pour objet de désigner des catégories ou classes de véhicules et des produits qui peuvent être transportés entre les provinces de Québec et d'Ontario et d'édicter les conditions et restrictions applicables à ces véhicules.

The purpose of this agreement is to designate categories or classes of vehicles and products which may be carried between the provinces of Quebec and Ontario and to provide for conditions and restrictions applicable to these vehicles.

1. Toute personne qui effectue un transport privé, qui a une place d'affaires au Québec seulement et dont le véhicule est immatriculé dans la province de Québec, peut utiliser son véhicule pour transporter des biens de la province d'Ontario à la province de Québec, ou pour transporter des biens de la province de Québec à la province d'Ontario sans que ce véhicule soit immatriculé dans la province d'Ontario.

1. A person engaged in private transportation who has a place of business in the Province of Quebec only and whose vehicle is registered in the Province of Quebec may use his vehicle for the transportation of goods from the Province of Ontario to the Province of Quebec, or for the transportation of goods from the Province of Quebec to the Province of Ontario, without this vehicle being registered in the Province of Ontario.



2. Toute personne qui effectue un transport privé, qui a une place d'affaires en Ontario seulement, et dont le véhicule est immatriculé dans la province d'Ontario, peut utiliser son véhicule dans la province de Québec pour transporter des biens de la province d'Ontario à la province de Québec ou pour transporter des biens de la province de Québec à la province d'Ontario sans que ce véhicule soit immatriculé au Québec.

3. Sous réserve du paragraphe 5 ci-dessous, un transporteur public dont la principale place d'affaires est située dans la province de Québec et dont le véhicule est immatriculé dans la province de Québec peut utiliser ce véhicule dans la province d'Ontario pour transporter des biens de la province de Québec à la province d'Ontario, ou pour transporter des biens de la province d'Ontario à la province de Québec, sans que ce véhicule ne soit immatriculé dans la province d'Ontario lorsque les biens transportés sont:

- a) des meubles meublants usagés, non emballés au moyen d'emballages construits spécifiquement pour chacun de ces meubles, des objets ou des biens utilisés pour la production de spectacles ou expositions culturels y compris des représentations musicales ou de ballet ou des spectacles de théâtre, à la condition toutefois que ces spectacles, expositions ou représentations soient faits ou donnés sans but lucratif;
- b) des produits naturels de la ferme transportés du lieu de production, de cueillette ou d'extraction à une installation de transformation ou à un marché ou chez un marchand;

2. A person engaged in private transportation who has a place of business in the Province of Ontario only and whose vehicle is registered in the Province of Ontario may use his vehicle in the Province of Quebec for the transportation of goods from the Province of Ontario to the Province of Quebec, or for the transportation of goods from the Province of Quebec to the Province of Ontario, without this vehicle being registered in the Province of Quebec.

3. Subject to paragraph 5 hereafter, a public carrier whose principal place of business is located in the Province of Quebec and whose vehicle is registered in the Province of Quebec may use his vehicle in the Province of Ontario for the transportation of goods from the Province of Quebec to the Province of Ontario or for the transportation of goods from the Province of Ontario to the Province of Quebec, without this vehicle being registered in the Province of Ontario provided the goods transported are:

- a) used, uncrated household goods or objects and materials used in the production of cultural presentations and/or exhibitions, including musical and ballet presentations and art exhibitions, if such presentations or exhibitions are not carried on solely for the purpose of financial gain;
- b) natural products of the farm carried from the place of production, harvesting or extraction to a processing plant, market or merchant's establishment;

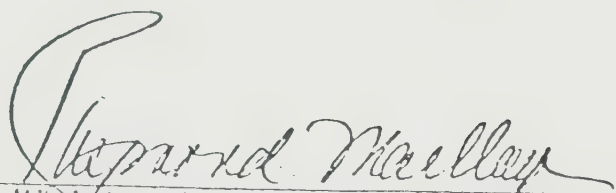
3. c) des animaux vivants;
  - d) des produits de laiterie, crème-rie ou fromagerie;
  - e) du bois de pulpe coupé mais non transformé, des copeaux de bois, du bran de scie, du bois de corde destiné au chauffage ou des bûches.
4. Sous réserve du paragraphe 5 ci-dessous, un transporteur public dont la principale place d'affaires est située dans la province d'Ontario et dont le véhicule est immatriculé dans la province d'Ontario peut utiliser ce véhicule dans la province de Québec pour transporter des biens de la province d'Ontario à la province de Québec ou pour transporter des biens de la province de Québec à la province d'Ontario sans que ce véhicule ne soit immatriculé dans la province de Québec lorsque les biens transportés sont:
    - a) des meubles meublants usagés, non emballés au moyen d'emballages construits spécifiquement pour chacun de ces meubles, des objets ou des biens utilisés pour la production de spectacles ou expositions culturels y compris des représentations musicales ou de ballet ou des spectacles de théâtre, à la condition toutefois que ces spectacles, expositions ou représentations soient faits ou donnés sans but lucratif;
    - b) des produits naturels de la ferme transportés du lieu de production, de cueillette ou d'extraction à une installation de transformation ou à un marché ou chez un marchand;
3. c) live animals;
  - d) dairy products, cream or cheese;
  - e) unprocessed pulpwood, wood chips, sawdust, cordwood.
4. Subject to paragraph 5 hereafter, a public carrier whose principal place of business is located in the Province of Ontario and whose vehicle is registered in the Province of Ontario may use his vehicle in the Province of Quebec for the transportation of goods from the Province of Ontario to the Province of Quebec, or for the transportation of goods from the Province of Quebec to the Province of Ontario without this vehicle being registered in the Province of Quebec provided the goods transported are:
    - a) used, uncrated household goods or objects and materials used in the production of cultural presentations and/or exhibitions, including musical and ballet presentations and art exhibitions, if such presentations or exhibitions are not carried on solely for the purpose of financial gain;
    - b) natural products of the farm carried from the place of production, harvesting or extraction to a processing plant, market or merchant's establishment;

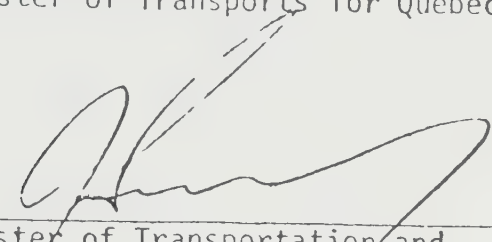
4. c) des animaux vivants;
  - d) des produits de laiterie, crème-rie ou fromagerie;
  - e) du bois de pulpe coupé mais non transformé, des copeaux de bois, du bran de scie, du bois de corde destiné au chauffage ou des bûches.
5. Le présent arrangement ne dispense pas un transporteur contre rémunération de l'obligation de détenir tout permis prescrit par un règlement adopté en vertu de la Loi des transports du Québec (L.Q. 1972, ch. 55) et ses amendements ou par l'ordonnance générale 4995 sur le camionnage adoptée par la Régie des transports (du Québec) et ses amendements.
  6. Il est aussi convenu que dans le cas d'un transporteur détenant un permis de camionnage en vrac délivré en vertu du règlement 12 sur le camionnage en vrac adopté par l'arrêté en conseil 2389-73 du 29 juin 1973 et ses amendements, le droit annuel payable pour un détenteur de l'Ontario d'un tel permis ne soit pas supérieur à \$15 par véhicule.
  7. Le présent arrangement entrera en vigueur le 15 novembre 1975, sous réserve qu'il soit approuvé par le lieutenant-gouverneur en conseil de la province d'Ontario et que le ministre des transports et communications de la province d'Ontario en devienne partie et de son adoption par le lieutenant-gouverneur en conseil de la province de Québec.

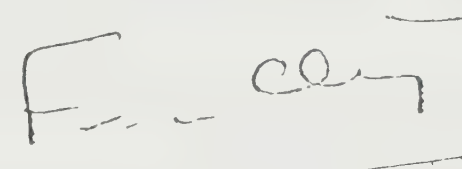
4. c) live animals;
  - d) dairy products, cream or cheese;
  - e) unprocessed pulpwood, wood chips sawdust, cordwood.
5. This agreement does not waive a public carrier from the obligation to hold any permit prescribed by a regulation adopted pursuant to the Quebec Transport Act (L.Q. 1972, ch. 55) and its modifications or by General Order 4995 on trucking adopted by the (Quebec) Transport Board and its modifications.
  6. It is further agreed that in the case of a carrier holding a permit for bulk trucking delivered pursuant to Regulation 12 on bulk trucking adopted by Order in Council 2389-73 of the 29th of June, 1973, and its modifications, the annual fee payable by the Ontario holder of such a permit will not be more than \$15.00 per vehicle.
  7. This agreement shall come into force on the 30th of November 1975, provided it is approved by the Lieutenant-Governor in Council of the Province of Ontario and provided that the Minister of Transportation and Communications of the Province of Ontario becomes party of this agreement and provided also that it is adopted by the Lieutenant-Governor in Council of the Province of Quebec.

EN FOI DE QUOI les présentes ont été  
signées en triple original à Toronto  
pour l'Ontario, le 27 novembre 1975  
et à Québec pour le Québec, le 19  
septembre 1975.

IN WITNESS WHEREOF these presents have  
been executed in triplicate at Toronto  
for Ontario, on the 27th of November, 1975  
and at Quebec City for Quebec on the 19th  
of September, 1975.

  
Ministre des Transports du Québec  
Minister of Transports for Quebec

  
Minister of Transportation and  
Communications for Ontario  
Ministre des Transports et Commu-  
nications de l'Ontario

  
Ministre des Affaires intergouver-  
nementales du Québec  
Minister of Intergovernmental  
Affairs for Quebec





1. MOHAWK COLLEGETransportation Planning Technology (3 Years)

1. A Co-op Program
2. 1st Graduate Class '76 - 15-20 (All Employed)
3. Enrollment September '76 - 32
4. Enrollment September '77 (Est.) - 40
5. Employment Areas - Traffic Planning
  - Traffic Engineering
  - Consulting Engineering

2. SHERIDAN COLLEGEa) Motor Carrier Administration (1 Year)

1. Commencing September '78
2. Present Indication of Enrollment - 25
3. Employment Areas - Trucking/Carrier Firms

b) Transportation Planning (2 Years)

1. Enrollment '75/'76 - 38
2. 2nd Year '76/'77 - 17 into Transportation Planning  
21 into Community Planning
3. Graduates '74 and '75 - 10 per year  
'76 - 8
4. Employment Areas - Planning Technician
  - Urban Transit Planning and Scheduling
  - Customs
  - Traffic Planning

3. HUMBER COLLEGETransportation Systems Planning Technology (3 Years)

1. Enrollment '76/'77 - 8
2. Anticipated Enrollment '77/'78 - 15
3. No Graduates (Commenced September '76)
4. Closely Related to Civil Technology - Allows Transfers
5. Employment Areas - Traffic Analysis
  - Transportation Studies
  - Urban and Regional Transit Planning and Design

#### 4. CENTENNIAL COLLEGE

##### Urban Transit Operations (2 Years)

1. Commences September 1977
2. Emphasis on Business (Option of General Business)
3. Directed to Operations Side of Transit Industry
4. Enrollment Target 1977 - 30-35
5. Employment Areas - Fleet Management
  - Scheduling
  - Routing
  - Manpower Planning
  - Municipal Transit Planning

#### 5. GEORGE BROWN COLLEGE

##### a) Truck and Tractor Trailer Driver (4 Weeks Average)

1. Enrollment (current) - 50 (35 M/P)  
(15 F.P.)
2. Offer 4 week Upgrading Course at Night  
(Extension)- in co-operation with OTA  
- Enrollment - 20-22
3. Offer Saturday Courses - 12
4. College Operates 11 Tractor Trailers
5. Employment Areas - Trucking/Carrier Industry

##### b) Straight Truck Driver (3 Weeks Average)

1. Enrollment (current) - 20 ( 7 M/P )  
( 13 F.P.)
2. College Operates 6 Trucks
3. Employment Areas - Local and Long Distance  
- Trucking Industry

SHERIDAN COLLEGE - OAKVILLE CAMPUSTRANSPORTATION PLANNING

Duration: 2 years  
 Approved: January, 1972  
 Commencement Date: September, 1972  
 Prerequisite: 1 Year of Community Planning  
 (First year of Community Planning  
 and Transportation common)

Program Objective

To prepare students for the role of transportation technician qualified for work in the following fields: traffic surveying, road analysis, highway planning and design, and passenger and cargo operations by the various modes.

Program of Studies

Transportation Planning (Common with Community Planning)		Year 1
<u>Course Title</u>		<u>Credit Value</u>
Drafting 1		3
Surveying		1.5
Map & Air Photo Interpretation		1.5
Planning Theory 1		3
Transportation Planning Procedures		3
Numerical Methods		1.5
Statistics		3
Computer Applications		1.5
English and Media Studies 1		4
*College Electives		3
Total		25

\*Students are advised to take Traffic Management 1 (TMD1100) as an elective.

# Program of Studies

Transportation Planning	Year 2
<u>Course Title</u>	<u>Credit Value</u>
Introduction to Transportation Systems	3
Traffic Management 2	3
Operational Characteristics	1.5
Traffic Surveys	1.5
Traffic Control	1.5
Capacity Analysis	1.5
Transportation Law	2
Geometric Design	1
Construction Techniques	1
Transportation Technology	3
English and Media Studies 2	3
College Electives	3
Total	27

## Career Opportunities

The transportation systems studied include highway design and planning, railroads, airlines, fast suburban trains.

The Transportation Planning program gives the students the technical training and background necessary to study the problems of transportation and to devise and implement new methods that will resolve them.

Graduates of this program will therefore be able to step into any one of several rewarding careers in the field of transportation.

These careers include: highway planning, design and maintenance; railway passenger and cargo operations; airport planning; private industry such as trucking or shipping companies; government agencies charged with local, provincial or federal responsibilities of traffic and transportation; consulting firms providing professional advice on specific projects.

HUMBER COLLEGE - REXDALE CAMPUSTRANSPORTATION SYSTEMS PLANNING TECHNOLOGY

Duration: 3 years (6 semesters)  
 Approved: September 29, 1975  
 Commencement Date: September, 1976

Program Objective

To train Technologists to participate in the Process of Planning of Transportation Systems by applying modern procedures to evaluate demand and to assess the best means to satisfy the transportation needs. The graduate will be able to participate in the functional and final design of Transportation Facilities. Also, the graduate will be able to function as a traffic analyst and carry out movement operation studies and supervise movement of goods and people.

Program of StudiesSEMESTER 1

<u>Course</u>	<u>Credits</u>
Mathematics I	4
Introduction to Public Relations	4
Statistical Methods	3
Surveying I	6
Construction Graphical Communications	4
English	4
Technical Option	<u>4</u>
	29

SEMESTER 2

Mathematics II	4
Systems Technology	4
Economics	4
Traffic Survey Methods	4
Sociology	4
Theory of Traffic Flow	4
English	<u>4</u>
	28



SEMESTER 3

Mathematics III	4
Computer & Data Processing Technology	4
Vehicle-Road-Driver System	3
Highway Technology	6
Demand Actuated Travel	3
Data Collection & Analysis	4
Elective	<u>4</u>
	28

SEMESTER 4

Statistics	4
Land Use and Location of Economic Activity	4
Principles of Urban Regional Planning	4
Urban Transportation - Mass Transit	6
Mathematical Models for Transportation Planning	4
Technical Report	2
Elective	<u>4</u>
	28

SEMESTER 5

Movement of Raw Materials and Processed Goods	4
Principles of Cost - Benefit Analysis	4
Town Planning	2
Technology, Environment & Quality of Life	4
Computer & Data Processing Technology	4
Transportation Industries (Management & Operational Economics)	4
Development of Alternative Transportation Schemes	<u>6</u>
	28

SEMESTER 6

Transportation Planning (Project & Report)	12
Evaluation & Selection of Final Plan	4
Urban Economic Activity	4
Public Relations	4
Writing	
Elective	<u>4</u>
	28

Career Opportunities

An inquiry was undertaken of people in responsible positions in the field of Transportation to acquire an indication of their opinion on the possible additional job opening in the field within the next five years.

The indications are as follows.

1. GOVERNMENT

- i) Federal (Ministry of Transport)
- ii) Province of Ontario (Ministry of Transportation & Communications)
- iii) Metro Toronto, (Public Transit, Planning, Operations and Management)
- iv) Peel Region
- v) Toronto Region
- vi) Durham Region
- vii) Boroughs within and near Metro Toronto
- viii) Municipalities throughout Ontario

2. INDUSTRIES

- i) Trucking
- ii) Contractors of Transportation Works
- iii) Urban Transportation Technology  
(Vehicle, Signal, truck and mode exchange)
- iv) Car and truck manufacture

3. TRANSPORTATION RESEARCH

Federal & Provincial

4. ENGINEERING

Transportation Consulting Firms

CENTENNIAL COLLEGE - ASHTONBEE CAMPUSUrban Transit Operations

( An Option to General Business )

Duration: 2 Years (4 semesters)  
 Approved: September, 1975  
 Commencement date: September, 1975

Program Objectives

To educate and train students and others currently employed to move into the growing but undermanned field of transit operations.

Program of Studies

Semester I	Accounting I (introductory) Introductory Marketing Manufacturing English Business Mathematics Electronic Data Processing
Semester II	Accounting II Investment Analysis Behaviour English Transit Operations I <u>Urban Geography</u>
Semester III	Economics Quantitative Methods General Education Elective Transit Operations II <u>Transit Project</u> <u>Transit Planning</u>
Semester IV	Economics Quantitative Methods II General Education Elective Transit Operations III <u>Manpower Planning</u> <u>Transit Management</u>

Career Opportunities

In the planning and development of transit systems within Metropolitan and Municipal areas.

GEORGE BROWN COLLEGESTRAIGHT TRUCK DRIVER

Duration: 3 weeks (average)

Program Objective

To enable the graduate to drive any conventional straight truck in urban areas and on public highways in a safe and efficient manner acceptable to the public.

Program of Studies

General Introduction to Training

Introduction to Various Types of Equipment

Pretrip Inspection Procedures

Driver Responsibility

Major Components

Driving and Manoeuvring

Regulations

Various Loading Procedures and Load Security

Documentation

Defensive Driving.

Career Opportunities

May start as a driver within the Transportation Industry such as transport companies, private fleets, cartage operations, local retail delivery, household goods moving, owner operator, and may have the opportunity to advance to supervisory levels based on the initiative of the individual.

GEORGE BROWN COLLEGE  
TRACTOR - TRAILER DRIVER

Duration: 4 weeks (average)

Program Objective

To enable the graduate to drive any conventional tractor-trailer in urban areas and on public highways in a safe, efficient manner acceptable to the public. The student may have the basic capability to acquire specialized knowledge relating to the specific requirements of individual classes of carrier operations.

Program of Studies

General Introduction to Training  
Introduction to Various Types of Equipment  
Pretrip Inspection Procedures  
Driver Responsibility  
Major Components  
Tractor Trailer Coupling and  
Uncoupling Procedures  
Driving and Manoeuvring  
Regulations  
Various Loading Procedures and Load Security  
Documentation  
Defensive Driving.

Career Opportunities

May start as a driver within the Transportation Industry such as transport companies, private fleets, cartage operations, local retail delivery, household goods moving, owner operator, and may have the opportunity to advance to supervisory levels based on the initiative of the individual.



### THE ONTARIO MANAGEMENT DEVELOPMENT PROGRAM

This program is coordinated and administered by the Ministry of Colleges and Universities with the educational objective to improve managerial and supervisory capabilities in business and industry throughout Ontario. The focus of the program is on the small and medium-sized business and industry owner/manager, and the prime delivery system used by the Ministry in reaching this market is the 22 community college system of the province.

The case method of instruction is used, allowing course participation at any level of experience of formal education. Participation is also encouraged by the flexibility in course scheduling - from a "crash" basis of 2½ days to a one night per week arrangement for 10 weeks. Each session is approximately 2 to 2½ hours, and courses comprise 10 or more sessions. This flexibility permits colleges to provide courses both on and off campus, and into the far recesses of their geographic areas.

The attached list of courses indicates standard offerings throughout the province. There are currently 61 courses in English and 28 in French available. These can be supplemented by colleges with their own prepared courses in response to special client requirements. In addition, certain government-sponsored seminars are delivered to business and industry through the program. All indicated courses and seminars are in a continuous state of updating and adjustment to maintain market relevance. New courses are also being developed.

This program is not to be confused with the full-time post-secondary or general extension programs of colleges. In addition to OMDP, many colleges offer extension management training, frequently under non-post-secondary, certificate programs.

In the 1975/6 fiscal year, over 10,000 registrants participated in OMDP.

March 7, 1977)

OMDP STANDARD COURSES AT DECEMBER 1, 1976

<u>OMDP</u> <u>Course No.</u>	<u>Course Title</u>
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BUSINESS AND MANAGEMENT - GENERAL

64-02	Retail Management (FBDB)
67-03	How to Start a Business (FBDB)
71-01	General Management
72-07	Management for Results
72-13	Business Development (FBDB)
74-02	Successfully Operating Your Business
75-08	Municipal Management for Results

PLANNING, INFORMATION AND CONTROL SYSTEMS

68-02	Business Law (FBDB)
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COMPUTER APPLICATIONS

72-05	Computer Concepts for Management
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MARKETING

65-01	Marketing for Service Businesses (FBDB)
65-02	Marketing for Manufacturers (FBDB)
66-01	Marketing for Manufacturers' Agents (FBDB)
67-01	Marketing for the Hospitality Industry (FBDB)
68-03	Marketing Management for the Middleman (FBDB)
70-02	Retail Selling (FBDB)
72-08	Managing the Marketing Function
72-09	Planning Profitable Advertising
72-12	International Marketing (FBDB)
<del>72-20</del>	Psychology of Professional Selling (Superseded by 76-10)
73-02	Planning Public Relations
73-08	Practical Decision-Making in Marketing (FBDB)
75-07	Managing the Field Sales Force
76-06	Exporting (FBDB)
76-10	Psychology of Professional Selling

FINANCE

63-01	Bookkeeping (FBDB)
63-02	Management Accounting (FBDB)
64-01	Farm Management Accounting (FBDB)
67-02	Farm Cost Accounting (FBDB)
68-01	Credit and Collections (FBDB)
70-01	Planning for Profits
71-03	Financial Management for Hospitality/Tourism
72-14	Cost Accounting (Manufacturing) (FBDB)
74-03	Financial Management (FBDB)
76-02	Management Approach to Credit and Collections
76-03	Small Business Financial Management (FBDB)
76-04	Basic Financial Controls (FBDB)
76-05	Taxation (FBDB)

OPERATIONS MANAGEMENT

69-01	In-Plant Automation
71-02	Work Study
72-04	Work Simplification
72-06	Job Enrichment for Administration
72-15	Manufacturing, Planning and Control (FBDB)
73-09	Purchasing (FBDB)
75-05	Labour Relations in Production
75-06	Job Enrichment for Production
76-01	Labour Relations in Construction

SUPERVISION AND FOREMANSHIP

72-01	Effective Supervision	- Construction
72-02	" "	- Mining
72-03	" "	- Safety
73-01	" "	- Hospitals
73-03	" "	- Public Administration
73-04	" "	- Human Relations for the Public Service
73-05	" "	- Communications for the Public Service
73-06	" "	- Production for Supervisors in the Public Service
74-01	" "	- Hospitality/Tourism
75-01	" "	- Human Relations
75-02	" "	- Communications
75-03	" "	- Administration
75-04	" "	- Production

PERSONNEL MANAGEMENT

66-02	Personnel (FBDB)
73-10	Human Resources Management (FBDB)
75-09	Personnel Selection Techniques

OMDP STANDARD COURSES AT DECEMBER 1, 1976(IN FRENCH)OMDP  
Course No.Course TitleADMINISTRATION DES AFFAIRES

72-17F	Développement des Affaires (FBDB)
73-07F	Les Achats (FBDB)
74-05F	Administration du Commerce de Détail (FBDB)
74-07F	Planification et Contrôle de la Production (FBDB)
76-07F	Droit des Affaires (FBDB)

MARKETING

64-03F	Le Fabricant et la Commercialisation de Son Produit
72-18F	Exportation (FBDB)
73-12F	Le Marketing (FBDB)
73-13F	Psychologie de la Vente Professionnelle (FBDB)
74-04F	Votre Publicité et le Consommateur (FBDB)
74-08F	Marketing/Services (FBDB)
75-10F	Marketing Touristique (FBDB)
76-08F	La Vente au Détail (FBDB)

GESTION FINANCIERE

70-03F	Comptabilité Administrative (FBDB)
71-05F	Comptabilité - Prix de Revient (FBDB)
72-11F	Gestion Comptable (FBDB)
72-16F	Credit et Recouvrement (FBDB)
72-19F	Comptabilité Administrative de la Ferme (FBDB)
72-22F	Contrôles Comptables (FBDB)
73-14F	Impôts (FBDB)

PRODUCTION

71-04F	Surveillance Efficace	Relations Humains
72-10F	"	Relations Ouvrières pour les Supervisors a la Production
72-21F	"	de la Construction
72-23F	"	de la Production
72-24F	"	- Communications
74-09F	"	de l'Administration

PERSONNEL

73-11F	Gestion du Personnel (FBDB)
74-06F	Administration du Personnel (FBDB)

OMDP SEMINARS AT DECEMBER 1, 1976

OMDP

Seminar No.

76-09S

Ontario Retail Sales Tax

76-11S

How to Keep Government Inspectors Off Your Back



MOHAWK COLLEGE - FENNELL CAMPUSTransportation Planning Technology

Duration: 3 Years (6 Semesters)  
 Approved: December, 1972  
 Commencement date: September, 1973

Program Objectives

The objectives of the program is to provide an understanding of the problems encountered in the movement of persons and goods and to train men and women in the methods of achieving efficient, economical and practical solutions to these problems. The program embraces studies in Transportation Planning, Traffic Engineering, and Goods Movement and includes such topics as the relationships between land use and transportation, mass transportation, physical distribution, traffic control, economics, mathematics, data processing and system analysis.

Program of Studies

<u>First Semester</u>	<u>Hours per Week</u>
Transportation Planning I	4
Graphics	3
Vehicle Characteristics	4
Data Processing I	4
Communication Skills	4
Mathematics	4
Urban Economics I	4
Physical Education	1
<hr/>	
Total Hours	28
<u>Second Semester</u>	
Transportation Planning II	4
Graphics	3
Traffic Studies	4
Data Processing II	4
Literature	4
Mathematics	4
Urban Economics II	4
Physical Education	1
<hr/>	
Total Hours	28

Program of Studies

<u>Third Semester</u>	<u>Hours per Week</u>
Traffic Engineering	4
Surveying	4
Transportation Economics I	4
Information Systems Design I	4
Communications	3
Mathematics	4
Statistics	3
<hr/>	
Total Hours	26
<u>Fourth Semester</u>	
Traffic Engineering Applications	4
Geometric Design I	4
Information Systems Design II	4
Mathematics	4
Statistics	3
Transportation and Land Use	3
Liberal Studies Elective	3
Transportation Modes	3
<hr/>	
Total Hours	28
<u>Fifth Semester</u>	
Transportation Planning III	4
Geometric Design II	4
Physical Distribution	4
Public Transportation	4
Transportation Project I	5
Operations Research	4
Transportation Economics II	4
<hr/>	
Total Hours	29
<u>Sixth Semester</u>	
Traffic Networks	4
Management Systems	4
Goods Movement	4
Transportation Project II	4
Real Time Transportation Systems	4
Human Relations and Labour Organization	4
<hr/>	
Total Hours	24

### Career Opportunities

The graduate may work for federal, provincial and municipal government departments, for distributing companies, trucking firms, shipping lines, airlines and railways, etc. The graduate of this program will be involved in one or more of the following responsibilities:

- a) Collection of relevant data such as parking activity, traffic movement, etc.
- b) Analysis of such data.
- c) Design of new traffic facilities incorporating proposals for intersection, improvement, methods of handling truck traffic, traffic control, parking plans, public transit systems and other associated elements.
- d) Prepare proposals of the most efficient and economic methods of transporting goods and people.

The transportation planning technologist would work under the supervision of an engineer or transportation manager but would be expected to show a high degree of initiative. He might, in turn supervise a team of technicians in order to carry out his responsibilities.

SHERIDAN COLLEGE - BRAMPTON CAMPUS

MOTOR CARRIER ADMINISTRATION

Duration:	1 Year (2 semesters)
Approved:	December 29, 1976
Commencement date:	September 1977
Prerequisite:	1 Year of Business Administration or Transportation Planning or Community Planning

### Program Objective

To upgrade the calibre of administrative staff in the Ontario Trucking Industry and to enlighten young people concerning career opportunities available in modern Motor Carrier operation.

## Program of Studies

Course	Hours per Week	
	Semester I	Semester II
Motor Carrier Marketing	3	3
Motor Carrier Administration	3	-
Equipment and Operations	3	3
Tariffs and Costing	-	3
Personnel Management	3	-
Transportation Labour Relations	-	3
Transportation Regulations	3	3
Management Information Systems	-	3
Accounting II	3	-
Corporate Finance	-	3
Traffic Management and Distribution	3	3
Communications	3	3
	24	27





APPENDIX - V

STATUS REPORT  
ON THE  
RECOMMENDATIONS OF THE MINISTERIAL  
INQUIRY INTO THE DUMP TRUCK INDUSTRY

## RECOMMENDATION 1:

"All accounts for transportation services rendered should be paid within 30 days"

## IMPLEMENTATION:

The general application of this recommendation may be outside the purview of the Public Commercial Vehicles Act, and constitute an interference in the formation of individual contractual relationships. Further, in discussing this recommendation with the Commissioner, it was agreed that 30 days is too short a period to be practical.

In keeping with the spirit of the recommendation, the Ministry of Transportation and Communications agreed with the Commissioner that it would endeavor to make such payments within 45 days.

## RECOMMENDATION 2:

"Common carriers operating dump trucks carrying road construction materials should be licenced"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), effective January 1, 1976.
- The Public Commercial Vehicles Amendment Act, 1976, (Bill 39), effective April 14, 1976.
- Ontario Regulation 33/76, which amends Regulation 700 of the Revised Regulations of Ontario, 1970, made under The Public Commercial Vehicles Act, effective January 31, 1976.

## RECOMMENDATION 3:

"Licences should be granted by regions"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), effective January 1, 1976.
- The Public Commercial Vehicles Amendment Act, 1976, (Bill 39), effective April 14, 1976.
- Ontario Regulation 33/76, which amends Regulation 700 of the Revised Regulations of Ontario, 1970, made under The Public Commercial Vehicles Act, effective January 31, 1976.

## RECOMMENDATION 4:

"All dump trucks, wherever they are, should be subject to the same requirements of safety and loading"

## IMPLEMENTATION:

None required. The safety and local provisions of the Highway Traffic Act apply, and have always applied, universally throughout the Province.

## RECOMMENDATION 5:

"Municipal dump trucks should be exempt from provincial rate filing"

## IMPLEMENTATION:

None required. Trucks operating exclusively within an Urban Zone are exempt from the provisions of the Public Commercial Vehicles Act.

## RECOMMENDATION 6:

"Truck brokers or lessees should be registered"

## IMPLEMENTATION:

None. The Ministry of Transportation and Communications has this recommendation under consideration, particularly in view of the recommendations of the Interim Report of the Select Committee on the Highway Transportation of Goods.

## RECOMMENDATION 7:

"Bond of \$5,000 should be posted by broker or lessee"

## IMPLEMENTATION:

None. The Ministry of Transportation and Communications has this recommendation under consideration, particularly in view of the recommendations of the Interim Report of the Select Committee on the Highway Transportation of Goods.

## RECOMMENDATION 8:

"MTC minimum rates should be extended to all government contracts involving dump trucks"

## IMPLEMENTATION:

By decision of the Cabinet in May 1976, the Ministries of the Government of Ontario were instructed to observe Ministry of Transportation and Communications minimum rates in all Provincial Government contracts involving dump trucks.

The Cabinet further directed that the implementation of this observance be the individual responsibility of each Ministry engaging such contracts.

## RECOMMENDATION 9:

"Complaints of non-payment by shippers of minimum transportation rates should be made to Contract Control Office, at Downsview"

## IMPLEMENTATION:

In meeting with the Commissioner, it was determined that this recommendation was meant to apply solely to complaints regarding Ministry of Transportation and Communications contracts.

The responsibility for these complaints has been, and is currently an assignment of the Ministry's Contract Control Office.

## RECOMMENDATION 10:

"Minimum rates should be refined by geographic areas, preferably according to regions"

## IMPLEMENTATION:

In meeting with the Commissioner, it was agreed that regional differences were too complex for a regional rate system to be immediately practical. It is possible for the Ministry of Transportation and Communications to develop such a system, in view of further considerations which may come to the Ministry's attention.

## RECOMMENDATION 11:

"In respect of MTC contracts, any owner of dump trucks carrying construction materials should be paid at least the minimum rate"

## IMPLEMENTATION:

The minimum rate has been, and is currently enforced with respect to dump trucks engaged by contractors and subcontractors to the Ministry of Transportation and Communications.

Though it would pose difficulties in administration and enforcement, it is possible for the Ministry to extend the applicability of its minimum rate, in view of considerations which may come to the Ministry's attention.

## RECOMMENDATION 12:

"Any Ministry subsidizing a project utilizing dump trucks should require compliance with MTC minimum truck haul rates"

## IMPLEMENTATION:

It is the considered opinion of the Ministry of Transportation and Communications that the only reasonable method of implementing this recommendation would be through legislation of a direct provision for rate regulation in The Public Commercial Vehicles Act.

Otherwise, the implementation of this recommendation would require the Province to control the procurement procedures of a large number of organizations, most importantly including municipalities receiving funds from any Provincial Ministry.

The Ministry has forwarded this recommendation to the Municipal Engineers' Association for its consideration and action, and intends to make further inquiries as to the Association's response.

## RECOMMENDATION 13:

"A register of dump truck owners seeking employment should be established by regions"

## IMPLEMENTATION:

In meeting with the Commissioner, the Ministry of Transportation and Communications indicated that such registers could be kept, but that they would have limited impact on prospective contractors because it would be incumbent on the registrants to maintain an accurate statement with the register of their availability on a day-to-day, even hour-to-hour basis.

At this time, no further action has been taken, or is being considered with respect to this recommendation.



## RECOMMENDATION 14:

"Licensees should file tariffs"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 15:

"The schedule of MTC minimum rates should be accepted by the Ontario Highway Transport Board"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 16:

"Tariffs should be subject to rejection and suspension"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 17:

With respect to the filing of tariffs, "Each licensee should have the right of independent action"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 18:

"Tariffs should remain in effect for 1 year"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 19:

"Affected parties may complain of a tariff"

## IMPLEMENTATION:

None. In the opinion of the Ministry of Transportation and Communications, dump truck rates change frequently enough that the purpose of a public notification of charges would not ensue from a rate filing system respecting dump truck services.

## RECOMMENDATION 20:

"The application of tariffs should be subject to audit by MTC"

## IMPLEMENTATION:

The Ministry of Transportation and Communications currently has the right to audit only its own contracts, and does so regularly on a spot-check basis.

## RECOMMENDATION 21:

"A provincial standards association to recommend industry specifications should be established"

## IMPLEMENTATION:

None required.

No enabling legislation is required to permit dump truck owners and operators to form such an association or to adopt technical and other standards which do not contravene the Combines Investigation Act of Canada. The Canadian Standards Association, and other similar organizations, can be contracted for the purpose of standards writing.

## RECOMMENDATION 22:

"Each dump truck driver should be furnished with a trip record"

## IMPLEMENTATION:

Ministry of Transportation and Communications discussions with aggregate producers revealed that the Ministry was the sole offender in not giving dump truck operators weigh bills or tickets for their records. The Ministry has revised its ticket form to include a copy for the operator of the truck.

## RECOMMENDATION 23:

"Joint Hearings should be held by Ontario and Quebec Boards"

## IMPLEMENTATION:

In October 1976, the Chairman of the Ontario Highway Transport Board reported that an agreement had been reached with the Quebec Transport Commission which would allow joint Ontario-Quebec hearings to begin early in 1977.

At this time, it is not known whether the new administration in Quebec will choose to proceed as agreed in October, or whether such procedures might be made available for the hearing of dump truck applications.

## RECOMMENDATION 24:

"Facilities to assemble relevant Quebec information should be established"

## IMPLEMENTATION:

The Ministry of Transportation and Communications assembles such information through various offices; and, particularly through its Eastern Region office in Kingston and District offices throughout eastern Ontario, makes information of a general nature available on an informal basis. The Ministry is not prepared, however, to assume responsibility for consultation with individuals regarding rights and procedures available through the Government of Quebec.

## RECOMMENDATION 25:

With reference to the Province of Quebec,  
"More effective enforcement should be  
required at provincial border"

## IMPLEMENTATION:

In the past year, the Ministry of Transportation and Communications has established a joint committee with the Quebec Ministry of Transport. One of the purposes of establishing the committee was to address border problems, including **DUMP TRUCK BORDER ISSUES IN BOTH PROVINCES**

## RECOMMENDATION 26:

With reference to the Province of Quebec,  
 "Exemptions to non-resident truckers should  
 be granted only to the extent that similar  
 exemptions are allowed to Ontario truckers  
 by the reciprocating province"

## IMPLEMENTATION:

In the Summer of 1976, a new reciprocity agreement between Ontario and Quebec became effective, which attempts to achieve this objective in the registration of trucks serving both provinces. Nevertheless, the Ministry of Transportation and Communications is aware of the difficulties being encountered in the vicinity of the Quebec border by Ontario dump truck operators.

Thus, in the past year, the Ministry has also established a joint committee with the Quebec Ministry of Transport, to address this and other issues of concern to both provinces. In a recent meeting of this committee, officials of the two provinces discussed border area dump truck operations in some detail.

At that time, Ontario officials were assured that extra-provincial permits, under Quebec Regulation 12 respecting bulk trucking, are available to Ontario operators, which would authorize cross-border for-hire operations for the purpose of delivering material to locations in Quebec. The Quebec officials also indicated their willingness to amend Regulation 12, so as to extend the applicability of such permits to bulk commodities originating in, and destined to locations outside of Quebec.

However, in conjunction with this development, it should be noted that it is difficult, if not impossible, to reach agreement on reciprocity provisions to over-ride Quebec regulatory legislation for which there is no equivalent legislation in Ontario. The implication here is that it will be difficult, if not impossible, to resolve the intra-provincial inequities faced by Ontario dump truck operators in the vicinity of the Quebec border.



## RECOMMENDATION 27:

"There should be joint responsibility for overloading by both shipper and trucker owner"

## IMPLEMENTATION:

- The Highway Traffic Amendment Act, 1976, (Bill 25), amending Sections 64 and 80 of The Highway Traffic Act, effective June 7, 1976.

## RECOMMENDATION 28:

"Metal plates should be affixed to each truck showing gross and axle weights"

## IMPLEMENTATION:

None, pending efforts of the Ministry of Transportation and Communications to amend the gross load and axle weight provisions of the Highway Traffic Act. In particular, the Ministry has not yet obtained industry concurrence in proposed revisions of the gross load legislation.

## RECOMMENDATION 29:

"Section 5 (1) of The Public Commercial Vehicles Act should be repealed"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), effective January 1, 1976.
- The Public Commercial Vehicles Amendment Act, 1976, (Bill 39), effective April 14, 1976.
- Ontario Regulation 33/76, which amends Regulation 700 of the Revised Regulations of Ontario, 1970, made under The Public Commercial Vehicles Act, effective January 31, 1976.

## RECOMMENDATION 30:

"Licensing of dump trucks should be returned to the Ontario Highway Transport Board"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), effective January 1, 1976.
- The Public Commercial Vehicles Amendment Act, 1976, (Bill 39), effective April 14, 1976.
- Ontario Regulation 33/76, which amends Regulation 700 of the Revised Regulations of Ontario, 1970, made under The Public Commercial Vehicles Act, effective January 31, 1976.

## RECOMMENDATION 31:

"Dump truck owners should no longer be contract carriers"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), effective January 1, 1976.
- The Public Commercial Vehicles Amendment Act, 1976, (Bill 39), effective April 14, 1976.
- Ontario Regulation 33/76, which amends Regulation 700 of the Revised Regulations of Ontario, 1970, made under The Public Commercial Vehicles Act, effective January 31, 1976.

## RECOMMENDATION 32:

"Applications should be heard by the Board during the winter months"

## IMPLEMENTATION:

The Ontario Highway Transport Board hears, and has always heard applications throughout the calendar year.

In the initial processing of R license applications during 1976, special R license hearings were conducted as required in the various regions of the Province.

At this time, however, R license applications are in the process of being integrated into the general hearing procedures of the Board. At the discretion of the Chairman of the Board, such hearings are scheduled in regional locations when a sufficient number of applications pertaining to a region have been filed, usually 15 to 20 cases or more, to reduce the hearing costs borne by the applicants to a reasonable level.

## RECOMMENDATION 33:

"Senior management of MTC field organization should assist Ontario Highway Transport Board", in assessing the demand for, and supply of dump truck services.

## IMPLEMENTATION:

Consultation between the Ontario Highway Transport Board and other offices of the Ministry of Transportation and Communications is conducted on a routine basis, and includes the exchange of information pertinent to the responsibilities of the Board.

## RECOMMENDATION 34:

"Interim or temporary licences should be continued"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), Section 2, Subsection 4, effective January 1, 1976.

## RECOMMENDATION 35:

"There should be no limitation on the number of trucks to be operated by an individual"

## IMPLEMENTATION:

- The Public Commercial Vehicles Amendment Act, 1975 (2nd Session), (Bill 3), Section 2, Subsection 3, effective January 1, 1976.

According to this legislation, the Ontario Highway Transport Board must, in issuing a certificate, specify the maximum number of vehicles which may be operated. However, the Board is not limited in the determination of that specification, by any statutory maximum.

## RECOMMENDATION 36:

"There should be suspension of operations for bad safety record or for constant overloading"

## IMPLEMENTATION:

Enforcement of the safety and loading provisions of the Highway Traffic Act is, and always has been applicable to the operation of dump trucks. Under Section 27 of this Act, the Registrar may suspend or cancel any permit or licence issued to an owner, operator or chauffeur of a motor vehicle, for misconduct or contravention of the provisions of The Highway Traffic, The Public Vehicles, or the Public Commercial Vehicles Acts, or any reason that he may consider sufficient.

## RECOMMENDATION 37:

"There should be a continuing exchange of information with other provinces"; that "MTC continue its obvious excellent relationship with corresponding Ministries in Canada".

## IMPLEMENTATION:

The Ministry of Transportation and Communications carries on extensive and regular communications and consultations, of both a formal and informal nature, with its provincial and federal counterparts; and, with particular reference to motor vehicles, is a member and participant in the Canadian Conference Motor Transport Administrators and the Conference of Ministers Responsible for Motor Vehicle Administration.

The Ministry is pleased that the Commissioner was able to benefit from the experience and advice of its counterparts across Canada.

## RECOMMENDATION 38:

"All dump trucks should be inspected semi-annually"

## IMPLEMENTATION:

The legislation noted below establishes a dump truck inspection program. At this time, initial inspections have been made, or are available, which validate complying vehicles until May 31, 1977. Measures which would make this program recurrent and semi-annual are pending.

- The Highway Traffic Amendment Act, 1975 (2nd Session), (Bill 2), Sections 1 through 7, effective December 18, 1975.
- The Highway Traffic Amendment Act, 1976, Sections 6 and 7, effective June 7, 1976.
- Ontario Regulation 544/76, made under The Highway Traffic Act, effective September 1, 1976.



- Ontario Regulation 544/76, made under The Highway Traffic Act, effective September 1, 1976.
- Ontario Regulation 545/76, which amends Ontario Regulation 477/74, made under The Highway Traffic Act, effective July 17, 1976.
- Ontario Regulation 935/76, which amends Ontario Regulation 544/76, made under The Highway Traffic Act, effective November 3, 1976.

#### RECOMMENDATION 39:

"Dump trucks should be found fit before being allowed to continue operations"

#### IMPLEMENTATION:

- Under Section 55 of the Highway Traffic Act, a constable or officer appointed for the purpose of carrying out the provisions of the Act may at any time require such examinations and tests of any vehicle as the constable or officer may consider expedient.

Where any such vehicle is found to be unsafe, the constable or officer may prohibit the operation of the vehicle on the highway and/or seize and hold its registration plates until the vehicle has been placed in a safe condition.

- Under Sections 1 and 2 of the Highway Traffic Amendment Act, 1975 (2nd Session), provision is made for a constable or officer appointed for the purposes of carrying out the provisions of the Highway Traffic Act to seize the number plates of vehicles not displaying a vehicle inspection sticker as required.

## RECOMMENDATION 40:

"Inspections should be applied with equal impact on private as well as on for-hire dump trucks"

## IMPLEMENTATION:

- Under Section 55 of the Highway Traffic Act, a constable or officer appointed for the purpose of carrying out the provisions of the Act may at any time require such examinations and tests of any vehicle as the constable or officer may consider expedient.

Where any such vehicle is found to be unsafe, the constable or officer may prohibit the operation of the vehicle on the highway and/or seize and hold its registration plates until the vehicle has been placed in a safe condition.

- Ontario Regulation 544/76, made under The Highway Traffic Act, regarding the dump vehicle inspection program and the application of vehicle inspection stickers to dump vehicles,
  - (a) defines dump vehicle as a commercial motor vehicle used for the transportation and dumping or spreading of sand, gravel, earth, crushed or uncut rock, slag, rubble, salt, calcium chloride, snow, ice or any mixture thereof, asphalt mixes or scrap metal; and
  - (b) exempts dump vehicles which are unladen, or for which a permit issued under The Highway Traffic Act authorizes a gross weight of 18,000 pounds or less, from the requirements of the dump vehicle inspection program.

## RECOMMENDATION 41:

"Vehicles found unsafe should not be allowed on the highways until a further inspection is made"

## IMPLEMENTATION:

- Under Section 55 of the Highway Traffic Act, a constable or officer appointed for the purpose of carrying out the provisions of the Act may at any time require such examinations and tests of any vehicle as the constable or officer may consider expedient.

Where any such vehicle is found to be unsafe, the constable or officer may prohibit the operation of the vehicle on the highway and/or seize and hold its registration plate until the vehicle has been placed in a safe condition.

- Under Sections 1 and 2 of The Highway Traffic Amendment Act, 1975 (2nd Session), provision is made for a constable or officer appointed for the purposes of carrying out the provisions of The Highway Traffic Act to seize the number plates of vehicles not displaying a vehicle inspection sticker as required.

## RECOMMENDATION 42:

"Drivers should be classified at an early date"

## IMPLEMENTATION:

- Ontario Regulation 906/76, made under The Highway Traffic Act, effective February 1, 1977.

## RECOMMENDATION 43:

"Loads on dump trucks should be covered by tarpaulins"

## IMPLEMENTATION:

- Ontario Regulation 632/76, made under The Highway Traffic Act, effective January 1, 1977.

## RECOMMENDATION 44:

"Associations of dump truckers should:

- (i) accept membership from all interested persons
- (ii) file audited reports annually
- (iii) produce certified copies of resolutions
- (iv) indicate nature and extent of minority views"

## IMPLEMENTATION:

No action has been taken by the Ministry of Transportation and Communications.

## RECOMMENDATION 45:

"Associations of dump truck owners advocating work stoppage should disclose whether decision was reached by secret ballot or by show of hands"

## IMPLEMENTATION:

No action has been taken by the Ministry of Transportation and Communications.





**BILL 4**

**Government Bill**

3RD SESSION, 30TH LEGISLATURE, ONTARIO  
25 ELIZABETH II, 1976

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**An Act to amend  
The Public Commercial Vehicles Act**

THE HON. J. W. SNOW  
Minister of Transportation and Communications

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TORONTO  
PRINTED BY J. C. THATCHER, QUEEN'S PRINTER FOR ONTARIO

## EXPLANATORY NOTE

Subsection 1 of section 2 prohibits the operation of a commercial motor vehicle on a highway for compensation except in accordance with the conditions specified therein. Subsection 2 provides exceptions to the prohibition in subsection 1. The proposed amendment is an added exception.

Subsection 1 of section 3 provides basically that where goods are transported in a commercial vehicle not owned or leased by the owner of the goods and pursuant to an agreement under which the owner or lessee directly or indirectly receives compensation, the goods are deemed to be transported by the owner or lessee of the vehicle for compensation. Subsection 2 of section 3 sets out circumstances in which an agreement shall be deemed not a valid lease for purposes of the Act. The proposed amendment adds to the list of circumstances under which an agreement or arrangement shall be deemed not a valid lease.

New section 3a of the Act prohibits the entering into of an arrangement or agreement to lease a vehicle with a gross weight in excess of 28,000 pounds if the lessee does not have to return the vehicle to the place where he received it from the lessor.

BILL 4

An Act to amend  
The Public Commercial Vehicles Act

1976

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 of section 2 of *The Public Commercial Vehicles Act*, being chapter 375 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1973, chapter 166, section 2, is amended by striking out "or" at the end of clause *a*, by adding "or" at the end of clause *b* and by adding thereto the following clause:

(c) the transportation by a commercial vehicle of ready mixed concrete.

2. Subsection 2 of section 3 of the said Act, as re-enacted by the Statutes of Ontario, 1973, chapter 166, section 3, is amended by striking out "or" at the end of clause *e*, by adding "or" at the end of clause *f* and by adding thereto the following clause:

(g) if, in the case of a vehicle with a gross weight in excess of 28,000 pounds,

(i) under the arrangement or agreement a provision for the return of the vehicle by the lessee to the point of receipt of the vehicle by the lessee at the completion of the arrangement or agreement is not included, or is altered or modified, or

(ii) the lessee gives up possession or control of the vehicle prior to the return of the vehicle to its point of receipt from the lessor,

but this clause does not make invalid an arrangement or agreement where the vehicle that is the subject of the arrangement or agreement is replaced by the lessor of the vehicle because it becomes unserviceable during the term of the arrangement or agreement.

s. 3a,  
enacted

3. The said Act is amended by adding thereto the following section:

Return of  
vehicle to  
point of  
receipt

3a. No person shall enter into an arrangement or agreement for the leasing of a vehicle with a gross weight in excess of 28,000 pounds where the arrangement or agreement does not provide for the return of the vehicle by the lessee to the point of receipt of the vehicle by the lessee at the completion of the arrangement or agreement.

Commence-  
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Public Commercial Vehicles Amendment Act, 1976*.



FILE NO. 1662-75-R

FEB 25 1977

ONTARIO LABOUR RELATIONS BOARD

Between :

The Mount Nemo Truckers Association,

(Applicant),

-and-

Nelson Crushed Stone, a division of King  
Paving and Materials, a division of The  
Flintkote Company of Canada Limited,

(Respondent),

-and-

United Cement, Lime and Gyproc Workers'  
International Union, AFL, CIO, CLC,  
Local Union #494,

(Intervener).

BEFORE: D.H. Kates, Vice-Chairman and Board Members  
P.J. O'Keefe and J.E.C. Robinson, Q.C.APPEARANCES: P. Kirby, Carmine Iafrate, Don Nickel,  
Karl Sommer, and Giuseppe Amello for the applicant;  
J.P. Sanderson, B.R. Baldwin and E.V. Drury for the  
respondent; Eric Batten for the intervener.

## DECISION OF D.H. KATES AND P.J. O'KEEFE:

1. This is an application for certification for a group of truckers engaged by the respondent at its quarry in Burlington, Ontario.

2. At the initial hearing scheduled in this matter the Board entertained the evidence and representations of the parties with respect to the applicant's status as a trade union under section 1(1)(n) of the Act. At that time it was determined that the applicant's status to represent the persons for whom certification was sought



was interrelated with, and dependent upon, whether such persons fell within the definition of "dependent contractor." There are approximately forty truckers affected by the applicant's efforts to acquire bargaining rights on their behalf. The respondent at all times asserted that these truckers in the traditional sense are independent businessmen who are disentitled to the benefits of representative rights. The respondent and the intervenor are parties to a collective agreement whose scope encompasses "an all employee unit." The intervenor has intervened in these proceedings solely for the purpose of safeguarding its representative rights. The intervenor has taken no position on the main issue before the Board nor has it suggested that the truckers under consideration are "employees" as opposed to "dependent contractors." The applicant asserts that the persons affected by the application are indeed "dependent contractors" and ought to be treated as "employees" entitled to representation by it in a separate and distinct bargaining unit.

3. The relevant provisions of the Act under review read as follows:

"1. - (1) In this Act,

(ga) "dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

(gb) 'employee' includes a dependent contractor;

6. - (4) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of such dependent contractors wish to be included in such bargaining unit."

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4. The Labour Relations Officer assigned the task of inquiring into the list and composition of the bargaining unit examined each of the truckers' duties and responsibilities in context with his particular relationship with the respondent. In examining the six volumes of information contained in his Report the parties in a general sense indicated that there was little distinction between the status of one trucker and the other. It was pointed out that two of the truckers had formed a partnership arrangement but had nonetheless operated one of the two trucks comprising the assets of the partnership in the service of the respondent. In short, the Board proposes to adopt an "all or nothing" approach with respect to our treatment of the truckers' eligibility to the status of "dependent contractor." (See: The Globe and Mail case, 63 CLLC, \$16,290, at page 1205, The Municipality of Metropolitan Toronto case, [1962] OLRB Rep. Dec. 322.)

5. The respondent is engaged in the business of processing and distributing crushed stone, asphalt and like materials to construction industry projects in the Burlington area. For this purpose it owns and operates a quarry and a plant for preparing its product. Employees are engaged by the respondent in this specific phase of its operation. The task of delivering the finished product to its customers is assumed by individual truckers hired by the respondent as the need dictates. The market pattern of the respondent's business is not unlike most undertakings involved in the construction industry or on its periphery. In the summer, demand for its product reaches its apex while in the winter demand is at its lowest ebb. For example, the truckers are divided into "A" and "B" groupings with a view to a disciplined organizational means for receiving loads for delivery. In the summer months on alternative days one group lines up at the commencement of the day for receiving of a load; in the winter months groups are extended line-up privileges on alternative weeks. On the particular week a group is not scheduled for work alternative employment is secured with the respondent's co-operation with the Town of Burlington where their services may be retained for snow removal.

6. The truckers, upon being hired, are presented with a contractual agreement which they are expected to sign. The document is prepared by the respondent without negotiation or consultation with the individual trucker. A large number of the truckers reviewed are shown to have provided service to the respondent on a relatively long term basis. Nevertheless no distinction is made with respect to the contents of the arrangement premised upon the trucker's length of service with the respondent. Payment for services

is made on a ton-mileage basis and rates are uniformly established in accordance with the geographic distance travelled with respect to a particular job. Premiums are set by the respondent in accordance with the nature of the load and in connection with distances not included in the schedules. Payments for stand-by time or delays in serving customers and for incidental services discharged at the respondent's yard are also determined on an ad hoc basis by the respondent. In the former instance co-operation with the customer is often required and in the latter case the respondent ordinarily establishes an hourly rate. There was some indication that individual truckers may at times have some input in determining long distance rates. In the event that the respondent gives a customer a discount in the sale of its product the loss is passed on to the trucker who is obliged to deliver the load below the pre-established rates. The trucker is neither informed in advance of this reduced rate nor is he extended the opportunity of negotiating the amount of the reduction.

7. In terms of regular benefits normally conferred upon employees, the trucker is not extended (nor indeed is he necessarily eligible for) unemployment insurance, workmen's compensation, Canada Pension, vacation pay, statutory holidays and the like. He is responsible for payment of income taxes, the arrangement for his hospitalization and the assumption of other like benefits. Each maintains some form of bookkeeping system either discharged by the trucker's spouse or a paid accountant.

8. The trucker owns and operates the truck that is necessary in the discharge of the delivery service extended the respondent. He is confined in his purchase to either the tandem or single axle truck. He is precluded from the purchase of the larger tri-axle vehicle. The market value of a truck may be as high as \$40,000.00. He is required under the provisions of the contract to carry a minimum of \$300,000.00 liability insurance. Although the evidence does not indicate that the respondent co-signs as guarantor with the trucker's creditor in the purchase of the vehicle, nonetheless the trucker from time to time is required to obtain a letter from the respondent pertaining to the nature and stability of his relationship with the respondent. He is responsible for the purchase of all vehicular licences and the necessary P.C.V. licences. Appropriate maintenance costs and general up-keep of the truck are borne by the individual. These costs, of course, are partially off-set by capital depreciation and other expenditures incurred in the operation of the truck may be claimed as allowable tax deductions from gross revenue. In regard to the application that is made to the Ontario Highway Transport Board for his P.C.V. licence the trucker is now eligible for the "R" licence which permits the haulage of crushed stone

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aggregate over two adjacent regions. Prior to the amended regulations, the Labour Relation Officer's Report indicates, as late as 1966 "PCV licences" were obtained with the aid of, and often, in the respondent's name. Gasoline may be purchased on the respondent's premises at the convenience of the trucker. The respondent requires that the trucker purchase a tarpaulin to cover his load in keeping with the requirements of government regulation. A trucker has often been denied a load, or has otherwise been penalized, for failure to provide a tarpaulin. The respondent's name does not appear on the truck nor is there any particular indication, save for a number affixed to the side of his truck, that would identify the trucker with the respondent's operation. In this respect the trucker has applied his vehicle for numerous purposes aside from hauling crushed stone for the respondent.

9. Passing reference has already been made to the operation of the delivery system devised by the respondent in consultation with the truckers. Drivers are expected to line up their vehicles for loads at 7.00 a.m. or earlier as prescribed from time to time by the respondent. There was some indication that a trucker may elect to show up for work as he pleases and determine the size of the particular load he carries. It is clear that the dispatcher assigns work loads on a first-come-first-serve basis to truckers constituting the particular group scheduled to work. The economic reality of the incentive to make ends meet, however, dictates the driver's alacrity to commence work and assume loads. In this regard there are some loads, particularly with respect to destinations in Toronto, that are viewed by the trucker as unprofitable. Collection of monies on C.O.D. orders is the responsibility of the trucker. If difficulties are encountered with the customer the driver is obviously expected to treat the situation with some tact. He is expected to make his delivery at a reasonable speed. It was acknowledged by a driver that he also benefits, in the financial sense, by the speedy dispatch of a load. In this regard a number of the drivers indicated that some prejudicial act in the form of a penalty or discipline would follow in the event that a load was refused or if a load was not delivered within the anticipated time. Once the dispatcher has authorized the trucker to assume a load and he has left the respondent's yard the trucker chooses the particular route necessary to reach his destination. Most drivers personally attend to the delivery service with the truck he owns. In the event a trucker is on vacation, is under suspension for whatever cause, or otherwise incapacitated from discharging this service, he may, in consultation with the respondent

hire a driver to replace him.

10. The evidence contained in the Labour Relations Officer's Report clearly establishes that the trucker's principal source of revenue is through the delivery opportunities made available by the respondent. In terms of opportunities for supplementing his income the driver is also, to a meaningful degree, dependent upon the respondent. For example, a driver may be advised of an opportunity to haul a load for a related or sister company of the "Flintkote Conglomerate" of which the respondent is a member. The Board has heretofore related that opportunities to engage in snow removal for the Town of Burlington during the winter period is with the approval of, and in co-operation with, the respondent's officials. The truckers indicated that they may also haul fill for friends and acquaintances who retain their services. In this respect a trucker may purchase a load from the respondent and make a profit on a delivery to the customer. Cartage and horticultural services may also be provided by the trucker from time to time on an intermittent basis. Nevertheless the clear and uncontradicted conclusion to be derived from the evidence is that a driver, with respect to total fiscal revenues is shown to earn the lion's share of his income from the haulage services required by the respondent. The other avenues made available to the driver in terms of supplementing his income account minimally in the computation of gross income. Indeed, many of the drivers indicated that they were expected to give the respondent priority in its delivery service. A driver was expected to report the reason for his failure to attend the respondent's premises when work was made available.

11. The parties' submissions with respect to the breadth and scope of the Legislature's purpose in introducing the "dependent contractor" concept into the Act assumed extreme importance in making conclusions with respect to the Labour Relations Officer's Report. The respondent's argument with respect to the Legislature's intention was premised upon the status quo position assumed by the Board in distinguishing an employee from an independent contractor. (See: The Livingston Transportation Limited case, [1972] OLRB Rep. May 1972, p. 488, and as applied in a like factual situation described herein in The General Concrete of Canada Ltd. case, [1975] OLRB Rep. March 234.) Counsel suggested that the Legislature in recognizing the inadequacies of the existing approaches in dealing with the employee-entrepreneur distinction sought to codify, and thereby limit, the pronouncements of the

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Board in our most recent decisions. It therefore followed that even assuming the Board's position with respect to employment status of a person for purposes of the Act was sound, the uncertainty created by these decisions was removed by virtue of the introduction of the amendment. In applying the Board's analysis of the distinctions made in differentiating the employee from the independent contractor, as presently recognized by the Legislature, it was the respondent's general contention that the forty truckers under review continued to fall on the entrepreneurial side of the Board's pre-existing line of demarcation. The applicant dismissed the respondent's submission as overly circumscribed. He argued that the Legislature's intention was clearly expansionary with the objective of extending bargaining rights to persons who would otherwise be deprived of the rights of trade union representation. More particularly, reference was made to section 1(gb) in that the conception of "employee" was intended to "include" a "dependent contractor" as defined in section 1(ga) of the Act. (See: R.V. International Brotherhood of Electrical Workers Union, Local No. 1818, 73 CLLC, §14,163.)

12. The Board has considered the numerous publications and decisions in other jurisdictions concerning the Legislature's purpose for the amendments and the particular needs that were intended to be fulfilled. (See particularly Arthurs, H., "The Dependent Contractor : A Study of the Legal Problems of Countervailing Power," (1965), 16 Univ. of Toronto Law Journal 89, with respect to the source of the term "dependent contractor" and the acknowledged justification for its creation.) Moreover, the Labour Relations Board (BC) has engaged in an exhaustive review and analysis of the jurisprudential authorities inclusive of The Livingston Transportation case (supra) in explaining the social, economic and political objectives in introducing into the B.C. Labour Code, in language subsequently borrowed by the Ontario Legislature, the concept of the artificial person described as the "dependent contractor." (See: The Fownes Construction Co. Ltd. case, (1974) Can. Labour Relations Board, Rep. 453, at pp. 455 to 459.) In the Board's view it is more than apparent that the superimposition of this new species on the collective bargaining spectrum was intended to deal with the shortcomings of the common law and judicial restrictions placed upon its elasticity in reaching individuals requiring the assistance of collective bargaining. (See, for example, N.L.R.B. v. Hearst Publications (1944) 8 L.C. 179 in context of The Metropolitan Life Insurance Co., et al case, 70 CLLC, §14,088, at p. 37.) Suffice it to say for our purposes that the Legislature intended by the amendment to address itself to the mischief created by persons who may very well outwardly manifest the trappings

of independent entrepreneurs but who in an intrinsic sense are clearly in such a subservient economic position vis-a-vis the beneficiary of his services that he ought to be extended the protection intended by the collective bargaining process. In this context the Legislature recognized the economic vulnerability of depriving the "so called" small businessman of rights under the Act and thereby exposing him to the arbitrary whims of the person upon whom he is dependent for his livelihood. Not only is this individual denied benefits commonly accepted in our enlightened society as industrial relations norms (e.g., unemployment insurance, workmen's compensation, statutory holidays, vacation pay, minimum wage and maximum hours, etc.) but is also by operation of The Combines Investigation Act susceptible to civil and penal sanctions should he, along with his colleagues, seek by concerted action to redress perceived wrongs in his relationship with his ostensible employer. The watch word of the definition is "dependent", and dependent is to be interpreted in a manner consistent with the economic reality of the relationship with the beneficiary of the service having regard to the industry or undertaking under review. It therefore follows that the status of the "dependent contractor" must be matched and plotted in relation to the terms and conditions of "employees" in like industries to determine whether he, in a de facto sense, more resembles them. And, alternatively, it may very well be that, notwithstanding shortcomings in his development as a businessman, he may be without the need or the assistance of collective security. We perceive that the Legislature has instructed the Board in the conduct of such analysis to sacrifice form for substance, to dispel superficial distortion that disguises industrial reality and to supplant individual want by supporting, in appropriate circumstances, collective equality. In short, the Board must deal with the new problem of defining the parameters not only between the employee and the entrepreneur but also mid-way between that spectrum of distinguishing and isolating the "dependent contractor" who has statutorily been extended separate and distinct treatment.

13. To an extent the Board accepts the respondent's analysis with respect to the Legislature's attempt to dissipate uncertainty by recognizing the inadequacies of the approaches adopted at law in resolving the employee-entrepreneur dilemma. The Board does not propose to engage in a detailed analysis of these approaches such as "control test" and "the four-fold" test nor are the shortcomings of "the statutory purpose" test at all relevant to an interpretation of the statutes' mischief. Obviously these approaches

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and their relative shortcomings do to a limited degree explain and justify the need for Legislative intervention. Nevertheless it is certainly fallacious to suggest that the Legislature has thereby created an artificial limitation to the interpretation of the amendment's purpose by restricting its scope to some pre-existing status quo. The Board perceives no such interpretative restriction to our posture in dealing with the present case having regard to our understanding of the underlying mischief contemplated by the Legislature. Indeed, in no manner has it been demonstrated by judicial authority on review of our process that the Board's past decisions require the Legislative medication suggested in the respondent's submissions. In addressing ourselves to the issues the Board's task is to analyze the specific wording used in the definition of the "dependent contractor" under section 1(ga) of the Act and apply that analysis in the context of the factual circumstances before us. And, needless to say, the point upon which a particular person falls on this employee-contractor spectrum will obviously depend upon the facts and circumstances of each case. We accept as inevitable that the pronouncements heretofore applied by the Board in meeting what the respondent has characterized as the inadequacies of the past may very well have been rendered superfluous in the face of these amendments. Nevertheless, the Board need not conjecture at this point what implications that may forebode for the distinctions that will have to be made in future cases in order to accommodate the "dependent contractor" on the collective bargaining scenario.

14. The only issue placed before this Board is whether the forty truckers reviewed herein are "dependent contractors" as defined under section 1(ga) of the Act and, therefore, entitled to representation in a separate and distinct bargaining unit under section 6(4) of the Act. The respondent submits that the evidence contained in the Labour Relations Officer's Report supports the conclusion that in the economic sense the potential for augmenting the truckers' financial status was conclusively established. When ownership of the truck, the principal asset of the enterprise, is measured against the unrestricted nature of the P.C.V. license, economic mobility from customer to customer is assured. The only inference to be deduced from the truckers' disposition to continue to provide the respondent with his haulage service is that the benefits derived discourage any such change. In any event, the respondent asserts the truckers' freedom of mobility, whether exercised or not, is the key to his independence. Whether he elects to exploit that freedom ought not to cloud the discernment of the independent nature of his relationship with the respondent



15. The Board agrees that the opportunity for economic mobility is a factor in measuring the degree of independence exhibited by a particular entrepreneur in meeting his financial objectives. Indeed, perhaps in a particular circumstance it may very well follow that the individual entrepreneur may fall outside the definition of "dependent contractor" notwithstanding his election to extend the benefits of his service to one particular customer. Whatever that circumstance may be we are clearly of the view that when measured against the consideration of other significant factors the individual trucker reviewed herein does not fall into that category. In examining the Labour Relations Officer's Report the Board was impressed with the length of service with the respondent of some of the truckers. In several of these instances these drivers have not demonstrated any individual initiative to indicate they were at all self-reliant in expanding the parameters of their "business." The sheer uniformity of the terms and conditions imposed by the respondent without negotiation or, indeed, often times without consultation in satisfying the trucker's financial needs, contradicts any suggestion of an entrepreneurial relationship. What are the special inducements that have been offered by the respondent in its dealings with the truckers that would persuade them to curb their growth potential by committing their business destiny to the respondent's enterprise? Indeed, on much too frequent an occasion, the evidence indicates, a driver was "shown the gate" in the event independent initiative was exercised in the refusal of a load that was viewed by him as not being particularly profitable.

16. The more realistic picture delineated in the Labour Relations Officer's Report shows the trucker to be very much the captive of the respondent's enterprise. Indeed we are satisfied that, in assessing his relationship with the respondent in the circumstances described herein, it would be financial folly for him to seek alternative and additional business by extending his delivery service to other enterprises. Let us examine the factor of ownership and furnishing of his own truck in terms of whether the trucker is indeed financially dependent or independent of the respondent. The trucker must incur the expenses of purchasing and maintaining the vehicle as well as securing the necessary licenses in connection with the operation of the business of delivering crushed stone. Who is the beneficiary of such ownership? It is true that the trucker is, as a result, eligible for tax allowances in the process of running his enterprise. But in our view the real beneficiary in the circumstances described to us is the respondent who is spared the capital expenditures of purchasing a fleet of trucks and the concomitant

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maintenance expenses heretofore noted that are in fact shifted to, and assumed by, the individual trucker. It is true, as the respondent asserts, that the trucker is deprived of such benefits as statutory holiday pay, vacation pay, minimum wages, maximum hours, unemployment insurance and workmen's compensation. But again, who is the beneficiary? Is the trucker in the operation of the enterprise shown to be compensated for the sacrifice of these benefits otherwise extended employees? Has the risk assumed and the investment incurred in the operation of his business, having regard to the individual contract signed at the respondent's insistence, shown to be worthy of a business man of reasonably independent means? Surely the respondent's enterprise gains by virtue of the removal of the administrative expenses of having to make the necessary deductions and contributions to these patently costly employee benefits. And, once more, is it solely to the trucker's benefit that he is compelled by the respondent to assume a minimum of \$300,000.00 third-party liability insurance in the operation of the vehicle? Does not the common law as conceived by the courts exculpate the respondent from the liability of its agent by virtue of its exhortations of an absence of control over the manner in which the trucker performs his duties? And, finally, although the respondent does not act as guarantor with respect to securing of the necessary loans with respect to the purchase of the vehicle the trucker, nonetheless, must establish himself as a worthy credit risk by obtaining a letter of recommendation from the respondent. In no instance was it demonstrated that a driver, when confronted with the need for a loan, would secure the recommendation of any one of his other customers. (See: The Fownes Construction Ltd. case (supra) at p. 456 where specific reference is made to the relevance attached to the ownership and furnishing of tools.) Even in the quest of an opportunity to increase his income the trucker manifests a propensity to rely upon the respondent to assist him in securing temporary work whether it be snow removal services performed at the instance of the Town of Burlington or the intermittent haulage of a load of crushed stone through one of the respondent's related companies or one of the respondent's customers. Indeed, in absence of any evidence beyond the primitive and rudimentary trappings indicative of incipient business potential the Board can discern little capacity for entrepreneurship amongst the truckers that justifies attributing an independent characteristic to the manner in which he conducts his affairs. Indeed such conduct, inclusive of the marketing of his skills and the application of his vehicle are not so dissimilar to the obligations undertaken by an employee in applying his skills in the service of his employer. In having regard to the economic reality of the



trucker's relationship with the respondent and his dependency upon the respondent for the making of his livelihood, the Board is satisfied that he ought to be treated as a "dependent contractor" under section 1(ga) of the Act. In ascribing a guideline to be applied with respect to measuring the extent of the contractor's economic dependency of the "contractor" the Board refers to a statement made by The Canada Labour Relations Board in Midland Express Ltd., case 74, CLLC, \$16,104, at p. 877:

"Surely the test of control to be applied now to the dependency is of an economic nature. Are the persons involved obliged to sell their services in a market in which they are economically dependent on a single or a restricted few purchasers? Is their freedom to contract with any degree of independence so thwarted that they are in fact in a status equivalent to that of individual employees? One can envisage situations in which a person who would be completely independent from any employer-employee relationship in the common law contractual sense and yet would be absolutely dependent in such an economic sense."

17. Before leaving this phase of the case and in addressing ourselves to the respondent's submissions with respect to the requirement of the existence of "a continuing obligation" as a condition precedent to determining the "dependent" relationship, we repeat our observations made at the hearing - that no such condition need be read into the Legislature's intent. In the particular circumstances of this case we are satisfied, notwithstanding the expiry of the individual contract, that upon the truckers' acceptance of a load for delivery an obligation arises, vis-a-vis the respondent. This is especially the case in the construction industry where business relationships are inherently ephemeral and ambulatory in nature. In other words, imposition of the requirement of a continuing obligation with respect to determining the nature of the contractor's relationship with the user of his services is an unnecessary restriction upon the Legislature's purpose. (See again The Fownes Construction Company Ltd. case [supra] at p. 462.)

18. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

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19. The Board further finds that all employees engaged as truckers working at or out of the respondent's quarry at Burlington, Ontario, save and except dispatcher, persons above the rank of dispatcher, office staff and persons represented by subsisting collective agreements, constitute a unit of employees of the respondent appropriate for collective bargaining.

20. For purposes of clarity "all employees" refers to truckers found to be "dependent contractors" under section 1(ga) of The Labour Relations Act and therefore are to be treated as employees under section 1(gb) of the Act.

21 The Board is satisfied, on the basis of all the evidence before it, that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on 17th February, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

22. A certificate will issue to the applicant.

22nd February, 1977.

"D. H. Kates"

For the Majority

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.:

My dissent with respect to the issues of the status of the "dependent contractor" will be forthcoming.

"J.E.C. Robinson, Q.C."  
Board Member

22nd February, 1977



APPENDIX Y

CERTIFICATE OF TITLE LAW  
FOR ONTARIO

JULY, 1975

## FOREWORD

This report is intended to renew interest in an Ontario Certificate of Title programme, but additionally, it attempts to put forward a reasonably unbiased view of such a programme and to provide background information for those unfamiliar with certificates of title.

Much of the material has been lifted bodily out of studies, reports or standards prepared by or on behalf of the U.S. Department of Transport that was prepared at a time when only 34 of 50 states had a title system. All 50 states will have a title law this year.

Although a previous report - Feasibility of Title Law for Ontario, Report M.T.C. 201-4111 - concluded that "There is no overwhelming evidence to support or negate title law", it is now appropriate to review the Ministry's position because of significant problems in the regulation and control of unlicensed carriers who operate contrary to The Public Commercial Vehicles Act and The Motor Vehicle Transport Act (Canada), using what purportedly is a lease to conceal a "for-hire" operation.

It seems fair to say that Ontario's registration system together with most registration systems was not designed to guarantee the correct identification of vehicle owners.

It is important to remember that Ontario has a personal property security registration programme. This programme will, upon the application of a lender, record information regarding property owners whose property is subject to the lien. "Approximately 75% of registered liens in Ontario are on motor vehicles or include motor vehicles as security. A Central Registry of Liens (PPSR) will run on M.T.C.'s computer as will the automated motor vehicle registration system. Assuming a title system the three systems could be fully integrated as to file, maintenance and enquiry and run on M.T.C.'s computer."\*

There are several alternatives available at this time. They are:

- (1) Introduce a certificate of title procedure for all motor vehicles.
- (2) Introduce a certificate of title procedure for commercial motor vehicles only.

\* From Report D201-4111



- (3) Introduce a certificate of title procedure for commercial motor vehicles and all new motor vehicles, that is, motor vehicles registered for the first time.

## DEFINITIONS

- Title: A legal instrument issued by the Ministry identifying ownership of a particular motor vehicle for purposes of registration or assignment.
- The title may or may not show liens recorded against the vehicle.
- Registration: The process of identifying a particular vehicle and its ownership thereof, and the subsequent issuance of a registration certificate and registration plates sanctioning its use on the public highway.
- Manufacturer's Statement of Origin: A highly accurate, uniform document which establishes ownership from the time of manufacture to initial registration.
- Owner: A person, other than a lien-holder, who has the property in or title to the vehicle.
- The term includes a person or party entitled to the use and possession of the vehicle, subject to security of interest in another party. \*
- Certificate of Title: That is a document issued by a jurisdiction certifying vehicle ownership.
- It may also be used to record information concerning liens and other charges outstanding on the vehicle known at the time of issuance.
- The title document should be readily recognizable by the layman as a genuine document.
  - Extremely difficult to counterfeit.
  - Virtually resistant to alteration attempts.
  - Compatible with EDP application.
  - Detectable as visual as well as by extra visual methods.

\* See page 7, Uniform Vehicle Code

\*\* See U.V.C. Chapter 10, page 7d - a certificate of title is prima facie evidence of the facts appearing on it. Should the include lien information, then they fix the liability of the owner for the encumbrance.

Registration  
Certificate:

A document issued by Motor Vehicle Departments sanctioning the operation of a vehicle on public highways (a process essentially unrelated to establishment of the ownership of the vehicle).

## BACKGROUND OF CERTIFICATE OF TITLE OR DEED OF TITLE LAW

Certificate of Title - a system of registration of title to property, probably related to the Torans system introduced in Australia in 1857 and subsequently adopted in England, New Zealand and parts of Canada.

The principal characteristics of the system are as follows:

- (1) Registration of title must be made by the owner of the property in the office of the Registrar. Before title can be registered, an investigation of the owner's documents of title is made by the Registrar. A certificate of ownership is given the registrant and his documents of title are filed in the Registrar's Office.
- (2) There must be provisions for the consideration of any or all documents to establish the validity of title if such should be necessary before an act of title is issued.
- (3) A transfer of title is made by an application by the owner. A new certificate of title replaces the old and the new certificate of title is then given to the new owner.
- (4) The holder of the title certificate is guaranteed perfect title.

The desirability of title law for motor vehicles has been the subject of intermittent study in Ontario since at least 1955. In that year a Select Committee of the Ontario Legislature issued a report recommending the introduction of title law. The report was modified as to systemic content and re-issued in 1956 with the basic recommendation unchanged.

The following brief excerpt indicates the main thrust of the Select Committee's 1956 Report:

"The Committee is satisfied that a need has been demonstrated for legislation to provide a system of certificates of title for motor vehicles, admitting at the same time that proof of the need cannot with exactitude be determined any more than can many of the other needs that are met by the Legislature."

Bill 125, an Act respecting certificates of title of ownership for motor vehicles was drafted and received first reading on March 23, 1955. The Bill was redrafted in 1955 but not passed into law.

The Personal Property Security Act (1967) requires the Ministry of Consumer and Commercial Relations to maintain a central file of chattel mortgages and conditional sales contracts. Central registry of these documents is normally a component of a title law system in any title jurisdiction. \*

#### THINGS YOU MAY NOT KNOW

In the United States of America in 1974 almost one million motor vehicles were stolen and most were stolen by highly organized rings for purposes of resale.

The costs of auto thefts are found in (a) insurance - a quarter of a billion dollars annually, (b) municipalities - law enforcement, court system, penal system, owners' inconvenience and financial loss

The provincial registration programme must be strengthened by including ownership establishment as a part of the process.

Without identification of vehicle owners, the Ministry is unable to effectively administer the registration process or identify or control the vehicle at any subsequent time.

An effective title procedure discourages the theft of automobiles by those who steal primarily for financial gain by resale of vehicle parts or the vehicle itself.

The crash rate of stolen vehicles is said to be two hundred times greater than those of other vehicles (National Auto Theft Bureau).

The effectiveness of motor vehicle administration depends in large measure on the accurate establishment of vehicle ownership. Motor Vehicle Departments are unable to authorize the operation of a vehicle on public highways until they have identified it and its owner. Accurate ownership establishment should be a prerequisite to registration. Ownership of vehicles would be established from the origin of the vehicle to its ultimate disposal. Ownership establishment is reflected in the issuance of a certificate of title.

\* From Report D201-4111



CERTIFICATE OF TITLE

A motor vehicle registration safety programme should have as its major purpose the development of a central system to accurately identify and describe each vehicle and its owner.

A system that merely records the assignment of licence plate numbers to named individuals falls short of providing a control mechanism that is essential to safety programmes, to law enforcement or to providing security of interest for those who finance the purchase of motor vehicles.

The specific objectives of a registration system are:

- \* (a) To register motor vehicles to be operated on public highways.
- (b) To record safety-related, identifying information for each vehicle and to record the name and address of its owner.
- (c) To provide system flexibility and capability for cross-referencing and linking vehicle and ownership information for highway and traffic safety studies, research, and accident and injury causation investigations.
- (d) To reduce the time required to enquire of the vehicle registration data base and to provide vehicle and owner identification to law enforcement personnel.
- (e) To provide rapid and accurate updating of data related to the vehicle and its ownership from the point of origin through the complete processing cycle.
- (f) To achieve reasonable uniformity of registration systems, procedures, and practices whenever possible to facilitate vehicle and owner identification, and as an aid in research analysis.
- (g) To develop and maintain a registration information base which assists the vehicle inspection programme and the manufacturers' recall campaigns of defective vehicles to ensure the safe condition of vehicles.
- (h) To provide a method and basis for evaluating the registration programme and for the reporting of appropriate data for research and other uses.

\* (a) to (h) taken from Department of Transportation, 1966 report.

There is a need to strengthen the whole system of ownership establishment.

Accurate evidence of ownership optimizes control of vehicles.

Vehicle registration and titling discourage vehicle theft.

There are benefits if lien information is included as part of a titling and ownership procedure. Effective registration and titling ensure the acquisition of evidence of ownership that optimizes the control over vehicles. A standard on ownership or titling is desirable.

"The legislative background of the Highway Safety Act of 1966 established the following framework for a motor vehicle registration safety programme:

"...it is obvious that a single, central motor vehicle registration and titling system in each state designed to fully and accurately describe each vehicle and its owner is essential as a control mechanism in any safety programme.

"In a society as extremely mobile as ours, the need to be able rapidly to identify vehicle ownership is paramount. Some states have no titling system at all and vehicle registration is limited to licence plate numbers assigned to named individuals. Others have fairly comprehensive central, cross-referenced registration and titling systems."

#### PURPOSE

A motor vehicle registration safety programme should have as its major purpose the development of a central system to identify and describe each vehicle and its owner and to link their experience with the information contained in licence, accident, highway, and other data files related to highway safety. Such an information and control mechanism provides essential support to many other elements of the overall highway safety programme of the jurisdiction.

THE ROLE OF PPSR

To avoid unproductive duplication and to maximize the benefits of a title law, it will be necessary to establish the future role of PPSR.

Shall it be restricted to recording liens on property other than motor vehicles?

Shall it continue to record motor vehicle liens and provide this information to M.T.C. for inclusion in a certificate of title?

On July 2, 1969, D.O.T. said:

"It would seem, therefore, that a Certificate of Title system should be implemented under legislation which would deal specifically with the issuance of Certificates of Title, the requirement for their production whenever transfer of registration is affected and for the necessity to obtain releases from the creditors named in the Title before such a transaction would be acceptable. In this case, as I see it, data collection and file creation would remain the responsibility of the Department of Justice and Attorney General under the provisions of the Personal Property Security Act but that the information collected would be available to the Department of Transport for the purpose of issuing a Certificate of Title. In this respect the Department of Transport would probably be considered, vis-a-vis the registration of liens system, in the same light as any other person or organization to whom information is supplied. It is our belief that legislation could be devised which would give us the necessary authority to implement such a system without being in any way incompatible with the existing provisions of the Personal Property Security Act."



## PROCEDURES IN THE UNITED STATES OF AMERICA

Title states uniformly record lien information on the title document. Title states have adopted legislation which is patterned after the Uniform Commercial Code, a model law whose purpose is to achieve uniformity among state laws regulating commercial transactions. Key requirements in the U.C.C. for the filing of liens include the following:

A lien can only be perfected if it is filed. Although a uniform law, it allows states latitude in adopting the required filing of liens at a central or local site or both.

Where a lien on personal property is subject to a state central filing statute or a requirement that the lien be noted upon a certificate of title, all other lien requirements for that type of property may vary at the prerogative of the state.

The order of lien priority is based upon the date of lien filing with the earliest liens getting the highest priority. Upon payment of the amount owed, a lien is removed from the certificate and from the lien records. The certificate is then either delivered to the next lien holder or if no liens are outstanding, the vehicle owner.

The notation of the lien holder's interest upon the certificate and the central recording of the lien information is an exclusive method of perfecting the vehicle lien.

The majority of states deliver the title to the first lien holder (secured party) appearing on the certificate. The remainder deliver the certificate to the owner.

Lien recording on titles has significant benefits for the lender and consumer protection but no substantial impact on improved vehicle owner identification. (1) It protects the financial interest of the lien holder by officially recording his identity, that of the vehicle owner and the fact that a charge against the vehicle specified does exist. (2) It protects potential lien holders and potential purchasers by providing known sites at which they can enquire about the existence of unknown liens. (3) It protects the vehicle owner by providing him with a means of officially removing the record of a lien once the charge has been removed.

The use of titles as a lien recording device does have one significant advantage for vehicle owner identification in that it establishes a broad "ownership net" which includes all parties having a financial interest in the vehicle.

Lien holders must agree to any transfer of ownership and either, (a) cancel the lien agreement, or (b) transfer the lien to another party.

The inclusion of lien information on title documents is a controversial issue among some motor vehicle administrators because

(1) they feel Motor Vehicle Departments should not be concerned with consumer and lender protection. (2) Costs involved in developing and implementing such a system are high, however, it has been found that where centralized lien recording on titles has been implemented that (1) Fees associated with titling have at least paid for the costs involved. (2) Lien recording on title is an attractive way to strengthen ownership establishment procedures.

#### PROCEDURES FOR ISSUANCE OF TITLE

1. Include accurate establishment of ownership for all vehicles which are to be registered as a requirement in The Highway Traffic Act.
2. Specify the vehicles for which a certificate of title should be obtained.
3. Identify the process for the application for certificate of title including the following:
  - a) The use of an MSO as the primary proof of ownership document for previously unregistered vehicles.
  - b) The use of a certificate of title as primary proof of ownership for all previously registered vehicles.
  - c) Specification of information required on the application for title.
  - d) Specification of verification procedures for reviewing the MSO or title, including:
    - (1) physical inspection of the VIN;
    - (2) review of stolen vehicle files;
    - (3) comparison with previous ownership information;
    - (4) scanning of application for completeness and accuracy.
  - e) Retention of all documents presented as proof of ownership by the department.
  - f) Specification of:
    - (1) the nature of the title certificate, i.e. uniformity of size and distinctive format;
    - (2) minimum data elements including the number and issuing state or province of the previous title or MSO;
    - (3) specification that liens be recorded on the title document;
    - (4) specification that the title document be retained in a secured location by the vehicle owner (or lien holder);



- (5) specification of procedure for issuing a duplicate certificate of title;
- (6) specification of grounds for refusing to issue a certificate of title;
- (7) revise in light of specification of grounds for refusing to issue a certificate of title;
- (8) revise as necessary the statute or the regulation which provides authority to the Ministry to cancel, suspend or revoke a registration so as to reflect the certificate of title;
- (9) Specify that:
  - (a) certificates of title and VIN plates are to be returned to the Ministry when a vehicle is junked or abandoned, and
  - (b) junk dealers, i.e. scrap processors as well as dismantlers, are to be licensed and maintain accurate records.
- (10) Revise transfer of ownership procedures to reflect certificate of title and assignment of plates to vehicle owners.
- (11) Revise EDP systems to reflect certificate of title.

EXCERPTS FROM THE STUDY ON THE FEASIBILITY OF TITLE LAW FOR  
ONTARIO - REPORT D201-4111

SUMMARIZED RECOMMENDATIONS  
RECOMMENDED MODEL TITLE SYSTEM FOR ONTARIO

- A. Centralized title issue.
- B. Fees at least cost-recoverable and borne largely by lien holders.
- C. Title held by owner.
- D. Security interests shown on title.
- E. Indemnity fund likely.
- F. Manufacturers' statement of origin required on originals.
- G. Vehicle identification number verification on out-of-province vehicles.
- H. At least passengers, commercials and trailers to be titled.
- I. Head office title and registration should be separate sections reporting to the same director.
- J. Field operations should remain a part of registration.
- K. Title and registration files should be integrated on electronic data processing.
- L. Central Registry of Liens should be a part of the title system
- M. Titling should begin on originals only.

CONCLUSIONS AND QUESTIONS

- 1. There is no overwhelming evidence to support or negate title law.
- 2. We believe that fresh contact with the beneficiaries of title law is necessary to obtain this evidence. The last official contact on this topic occurred in 1956 during the proceedings of the Ontario Select Committee.

Beneficiaries are defined as being:

- General public
- Lenders
- Dealers
- Police
- Insurance industry

Other interested parties which should be contacted include:

- Law associations
- Chambers of Commerce
- Automobile Manufacturers' Association
- Garage Operators' Association
- Etc.

3. Historically, pressures in support of title law come from the credit grantors. If it is true that these customary pressures have been deflected by personal property security registration, could the needs of the province be best met by the titling of commercials only?

(ASSUMING TITLE LAW) - SHOULD TITLE AND CENTRAL REGISTRY OF LIENS ON MOTOR VEHICLES BE INTEGRATED

When title and central registry of liens exist in the same jurisdiction, the overwhelming majority of title jurisdictions combine title and that part of central registry of liens relating to motor vehicles in the same programme. One exception to this is the Province of Nova Scotia (the only Canadian title jurisdiction). Their approach has been to require liens to be registered with the Registry of Deeds locally.

Appraisal: Is central registry of liens on motor vehicles a logical component of a title system?

Let's look at the commonalities between the two systems. Lien information is, by definition, common to both systems. Both systems have common enquiry clients, mainly credit grantors and the public. The fee support for both systems flows from the same clients, again credit grantors and the public. Approximately 75% of registered liens in Ontario are on motor vehicles or include motor vehicles as security. Central Registry of Liens (P.P.S.R.) will be run on M.T.C.'s computer, as will the Automated Motor Vehicle Registration System. Assuming a Title System, the three systems could be fully integrated as to file maintenance and enquiry and run on M.T.C.'s computer.

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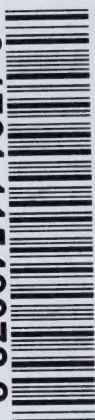
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